PAPERS

RELATING TO

AN INVESTIGATION

INTO THE

RIGHT OF INHERITANCE

TO

CERTAIN PRIVATE PROPERTY

OF THE

LATE NAWAB OF SURAT.

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Contents.



The Statement of Meer Jafur Ali Khan, Bahadoor, in support of the Claim of his Daughters to the Private Estate of His Excellency the late Nawab of Surat.

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1. The claim of my two daughters Zeeaoon-nissa Larlee Begum and Ruheemoon-nissa Begum, in right of my late wife Bukhtyarool-nissa Begum, to the whole of the private estate of the late Nawab of Surat, rests on the broadest possible foundation.

2. Whether you consider the manner in which the Nawab's Estate is to be disposed of purely as a question of Law, or whether you take a wider basis and seek for the principles which justice, nature, good feeling and reason would dictate as the rule of distribution, comprehending as these do the wishes and intentions of the deceased, the state of his family, the arrangements contemplated and partly made by him in his lifetime; all will tend to the same result—that his daughter and only surviving child must be regarded as his heir.

3. On the other hand, the claims of the Bukhshee and of Meer Kumroodin to six-sixteenths of this Estate (they are demanding, in fact, twelve-sixteenths) rest exclusively on the rigid application in their favor of the Mahomedan Law. They cannot advance a single equitable circumstance in support of their claims. They are relations so distant as scarcely to be recognised as such in any

other country. They were never on terms of intimacy or friendship with the deceased, and he never meant to leave them any thing at his death.

4. Indeed it appears very plainly from the evidence taken in the course of this enquiry, that the Nawab having two daughters, Bukhtyarool-nissa Begum and Nujeebool-nissa Begum, but no male issue, very early contemplated making his future sons-in-law with their wives his heirs, *and that having once formed this resolution, he retained it till the day of his death.*

5. In 1830 and before any negociation had commenced for the marriage of his children, the Nawab, to pave the way for the accomplishment of his design, addressed a very confidential letter to the Governor of Bombay, the general nature of which, though no actual copy is now forthcoming, is apparent from the Agent's records and has been deposed to by Meetaram Dewanjee in his evidence taken before you on the 29th March last.

6. I may perhaps be permitted to say, that it is well known in the Nawab's family that this was a request on His Excellency's part that he might be allowed to name his own successor, and that his object in writing confidentially, was to conceal the nature of the communication from the Native Agent, Ardaseer Bahadoor, with whom the Nawab was not then on good terms.

7. Very shortly afterwards the grand-sons of the King of Delhi came to Surat and resided in the Palace, and the Nawab contemplated marrying his daughters to them and *making them his successors.*

8. Meetaram Dewan has deposed that he was despatched to Bombay on a mission to Mr. Romer, then Acting Governor, to inform him of the above intent ... of

the Nawab and to obtain the Governor's sanction to the arrangement, and that Mr. Romer's advice to the Nawab was to seek an alliance with another family.

9. After this a negociation commenced for the marriage of these ladies with the younger brothers of the late Nawab of Baroda, and it has accidentally come out in the course of a collateral enquiry into the cause of that negociation having been broken off, that it was understood and intended that the sons-in-law should be *the successors of His Excellency of Surat.* This is apparent from the letters of the Nawab of Baroda produced by Meer Geeassoddin, in which the writer strongly urges the expediency of getting the arrangement ratified by the Governor of Bombay.

10. It can be of no importance on the present occasion to enquire why that negociation went off. It is certain that there was no disagreement on one point, namely, as to the matter of succession; but I am obliged to step aside, and briefly notice the cause of no marriage with this family having taken place, because it has been made an excuse for casting a very gross aspersion on my late wife.

11. Meetaram, who was the Surat Nawab's Dewan at that time, has deposed that he heard that the then proposed marriage went off because the Baroda Nawab would not agree to his brothers remaining after it with their father-in-law at Surat. The real cause, however, is evidently disclosed by the letters themselves, and I refer to them, and to the evidence of Meetaram and Meer Geeassoddin as a complete refutation of the statement made in the course of this enquiry by the Nawab of Baroda—a statement indeed which refutes itself, for it is impossible that the negociation for a marriage should have proceeded so

far and have lasted any length of time (Meer Geeassoddin says it lasted two years) and then have terminated for the reason assigned by the Nawab of Baroda, denied as that imputation of course would have been by the Nawab of Surat; and secondly, the assertion that His Excellency was the first to propose the marriage is so contrary to Mahomedan usage and sense of decorum, that it may safely be pronounced a fiction, the motives for which must be abundantly evident to you.

12. Proposals having been made about this time by my father Meer Surfaraz Ali, to the Nawab, for the alliance of myself and brother with His Excellency's daughters, a third negociation commenced, which ended in a compact between my father and His Excellency, that my brother and myself should, from the day of the marriage, reside with the Nawab in the Palace at Surat, and never leave it except with his express consent, and that he should constitute us his heirs and successors.

13. This agreement having been made, the Nawab caused a memorandum of its terms to be drawn up, which he forwarded to my father at Baroda, requiring him, my brother and myself to affix our seals to it. The following is the Nawab's letter to my father on the occasion:—

" In these auspicious days I had the pleasure to receive your favor " dated the 10th of the month of Rujub 1239 Hijree, forwarded with " Beychurdass the Soucar. The subject of my accepting your children " into my adoption, exuded from your friendly pen, has delighted me " most; with greatest pleasure the adoption of Meer Ukbur Ali and " Meer Jafur Ali has been noticed to my mind. I have included " my daughters into your adoption. May the High Almighty ren- " der the above children successful. In this matter some points are " required indispensably to be arranged. I have therefore given a " memorandum of the arrangement in charge of the above Soucar,

" who is a free agent on your part. You are accordingly to draw
" an agreement on your part, as well as that of your two sons, bear-
" ing the seals and signatures of all the three gentlemen, and forward
" it to me forthwith, so that other worldly ceremonies may take
" place."

14. The memorandum refered to in the above letter and delivered by Beychurdass to my father, was as follows:

" That Meer Surfaraz Ali Saheb, the son of Syud Moomtaz Ali, " the son of Syud Zoolfkar Ali, does hereby declare in writing, that " His Highness the Nawab of Surat, a descendant of the illustrious " Saint Syud Alee Hamdanee, has no male issue, but two daughters, " Mts. Nujeebool-nissa Begum and Bukhtyarool-nissa Begum, who, it " has been settled, are to be betrothed to my two sons Syud Ukbur " Ali and Syud Jafur Ali, and the mutual agreement having taken " place, I here give in writing that the Dowry of each of the Ladies " is to be one Lac of Rupees. The other engagement is this, that " the mutual expenses in the marriage ceremonies are to be equiva- " lent on both sides, suitable to the character of both parties. Also " my two sons are to remain as sons-in-law of the house at Surat in " the Palace with His Highness, and keep the house in a prosperous " state. The two sons have no authority to take the two Ladies out " of the city of Surat. This they will never do. Should a case " of urgency require the two sons to take the two Ladies or their " children to Baroda, they shall not do it without the permission of " His Highness for a fixed period of time. In case His Highness " proceeds to another climate, the Real Mothers of the Ladies are to " act upon the above engagement, *and His Highness will make a* " *Will in the name of the two sons regarding the succession and inhe-* " *ritance of the property and maintenance of the survivors, &c.* The " two sons are to act upon the Will *and they will always carry* " *the usage and ceremonies of the house of Hamdanee into execution.* " And they are never to marry a rival to the Ladies above cited. " Myself and my two sons will never deviate from the above engage- " ment. We, Meer Ukbur Ali and Meer Jafur Ali, do hereby de- " clare that the above engagement is confirmed by us and we shall " not deviate from it."

15. My father, my brother and myself having duly sealed a copy of the paper, enclosed it to the Nawab in a letter from my father which is as follows:—

"In this most happy time your letter which you wrote with extreme "kindness reached me, and filled my heart with joy, with regard to "what you have mentioned, that you have accepted my sons as your "own sons, and requesting me also to accept your daughters as my "own daughters. These tidings have given me the greatest pleasure "imaginable. I pray to God Almighty that the Children of both "sides may enjoy the happiness of this world. You had given a "draught of an arrangement to Beychurdass[e] Sowkar which we "three are to sign and seal; according to your bidding, I send you "the memorandum, duly sealed and signed by three names. The "above named Sowkar will deliver it to you, and whatever the above "named respected person shall say, you may rely upon as correct and "send me a quick answer. I hope you will always keep me informed "of your state of health."

16. After this, and before leaving Baroda for the marriages, my father feeling that in binding down his sons to reside always with the Nawab at Surat he ought to have some corresponding assurance that his children would inherit the Nawab's wealth, addressed a letter on the subject to Mirza Abdoolla Beg, the Minister of His Excellency, and which elicited from him the following reply:—

"It having been brought to my notice from your letter to the "address of Mirza Abdoola Beg (my precious friend,) that you have "a sort of anxiety in your mind; as the season of the grand and "august festival of the marriages has approached, I write you in "clear terms, that you should have no anxiety of any kind in your "mind and should not imagine these weddings to be the usual ones, "*for I adopt your children to be my sons and appoint them my* "*successors.* The ceremonies of the Nuptials are to be mutually "performed. After the consummation of the marriages, your sons "shall be mine, and they shall live in my house—allowing your "certainty to this writing of mine, and taking it for a deed of assur-

" ance for the future, make preparations for coming to this place
" along with your sons. Consider this to be a strict injunction, and
" be peaceful of mind in all respects. Further my sincere friend
" Mirza Abdoolla Beg's letter to you (on this subject) will explicitly
" afford you satisfaction."

17. After the above correspondence the marriages took place and were celebrated with great pomp and splendour. The amount laid out on the occasion, as deposed to by Moonshee Moohunlall, was scarcely less than 5 lacs of Rupees. A Military guard was lent to the Nawab. Salutes were fired from the Castle, and the Agent and all the European Society of the station attended. The Nawab invited the Governor, Lord Clare, the Members of Council and other distinguished persons from Bombay, to be present at the ceremony, which he desired should pass off with all possible eclât.

18. On the return of my father Meer Surfaraz Ali to Baroda, the Nawab at his request and for his satisfaction communicated what had occurred to James Williams, Esq., the Resident of Baroda, in the following letter:—

" In this time by the Grace of God the marriage of my two
" daughters has been completed with all propriety. The illustrious
" sons Syud Ukbur Ali Khan and Syud Jafur Ali Khan are incom-
" parable in dignity and ability. I am exceedingly pleased with them
" *and have appointed them my successors. I shall request the same*
" *of the Hon'ble British Government, and for the same reason I beg*
" *of you to keep this matter in your reflection.* Meer Saheb will
" mention it to you in detail, and after a few days my confidential
" friend Mirza Abdoolla Beg will be sent to wait upon you agreeably
" to the request of the Meer Saheb. Written on the 22nd of Zilhej
" 1249 Hirjee, or 2nd May 1834."

19. Mr. J. Williams acknowledged the letter in the following reply:—

" Your kind letter favored by Meer Surfaraz Ali Saheb, alluding

" to the succession of Syud Ukbur Ali Khan and Syud Jafur Ali " Khan (may they live long) to yourself having been written, its " perusal gave me a great pleasure. *In this matter I write to you as " a friend that I will use all the endeavours in my power with the " Hon'ble Government in the object above cited*; you should think of " no omission on my part as a sincere friend. The altercation now " impending between the Sirkar of the Guicowar and the Meer Saheb " on account of a misrepresentation made by some person will soon " be cleared off, if it please the Almighty God. In the meantime " leave has been granted to Syud Ukbur Ali as requested by you, " but permit him to come to Baroda for a few days when the Meer " Saheb will require his presence."

20. These documents which are in proof before you, can leave no doubt on your mind as to the terms on which the marriages took place, and my claim substantially is, that Government, in matters wherein they have no interest or policy to consult, will not interfere with the fulfilment of the contract.

21. My brother Meer Ukbur Ali and myself, from the time of our marriage, left our father's family and resided with the Nawab at Surat as his sons, according to the engagement.

22. In the year 1839 the wife of Meer Ukbur Ali Khan having died, and the issue of the marriage having predeceased her, my brother, with the Nawab's permission (though very much against his Excellency's wishes) rejoined my father at Baroda and continued ever afterwards to remain in his family.

23. My wife Bukhtyarool-nissa Begum having given birth to a son, who was named Meer Ameeroddin Khan, the Nawab on the 4th February 1841 and when the child was about two years old, took an opportunity, with the consent of myself and wife, of assembling all his household and

in their presence of placing the child on the musnud and presenting the state jewels to him. The Officers and servants then advanced and presented their Nuzuranas.

24. This circumstance was communicated by His Excellency to my father in a letter dated 12th Zilhej 1256 Hijree :—

" May it be known to you that in this august time on the 11th
" of Zilhej 1256, I seated my son Meer Ameeroddin Khan (may
" he live long) on my musnud; all the Officers of my sirkar gave
" their presents. All the materials belonging to the ancient dignity
" of the Nawabee of my ancestors, such as Drums and Mahee Mara-
" tib, and the wearing Jewels &c. of the state, the whole and perfect,
" I have given to the son above mentioned, and seated him in my place
" as desired by his parents. I congratulate you as my brother (on
" this occasion). What more shall I write except my love to you;
" may the days of your happiness be for ever. Accept compliments
" from your sister, and best respects from Malikazamanee Begum and
" Ameeroddin Khan and Zeeaoon-nissa Begum. Dated 12th Zilhej
" 1256."

25. My son Ameeroddin Khan having shortly afterwards died, the Nawab from that time forth regarded me, in virtue of my alliance with his only surviving child, as the sole successor to his title and dignity, and the fact was well known throughout the household and throughout the city. Indeed it has not been disputed in the course of the present enquiry. On the contrary, the brother of Padshah Begum openly stated it before you in the presence of all the claimants and no one contradicted him.

26. But independently of this, and although it is not suggested that the Nawab had any other plans or intentions as to his succession, the documents I have thus set out at length, the Purwanah granted to Mahomed Ali Beg, and the evidence of Moonshee Lootfoolla, of Dewan Atma-

ram, of Dewan Meetaram, of Golam Ahmed otherwise Moolvee Khoob Meeah and of Mahomed Ali Beg, uncontradicted as it is, must have convinced you that the Nawab never intended to swerve from his contract with my father, that he treated my wife and myself with the greatest affection up to the hour of his death, and that he must have died with the fullest conviction that his *private* estate at least would pass tranquilly into our hands.

27. The Government, without waiting to hear what we had to say or lay before them on the subject, at once pronounced the Nawabship and the Pension at an end.

28. They undoubtedly had a right to withhold the dignity from me if they thought proper to do so. That, of course, depended entirely on their pleasure and it was a matter quite within their province to decide.

29. They also, though interested in the matter, were the only authority to determine whether the Pension had ceased or not; and however much I may protest, as I earnestly do, against the justice of the decision arrived at, the circumstances necessarily called upon them to examine this question and to give it finality one way or the other.

30. It was quite otherwise, however, and was altogether a different question with respect to His Excellency's private estate. As to *that* the Nawab was a free agent. The consent of the British Government was not needed to legalise its devolution to his own daughter or to myself. It had passed into our hands as of course. Living with the deceased Nawab up to the hour of his death—known to all the household and dependants as their future masters—the title of my wife and myself was at once recognised. All looked to me on his decease for orders. I superintended the funeral, took charge of every thing and remained in

undisturbed possession for some months, granting receipts for the rent in my own name, expending it on the family with much more besides, and managing all the affairs as in the deceased's lifetime.

31. With this state of things the Government Agent, whose functions may be said to have ended with the Nawabship, had no right to interfere. The privileges of the family being declared to be at an end, it became obvious that my wife and myself could only legally be deprived of the Nawab's private estate by the course laid down in the Regulations, and those who claimed a right to share in the estate in opposition to us should have been referred to the Civil Courts for redress.

32. I leave you to consider what would have been the strength of our position, if instead of appearing here as rival claimants with the other parties to the private estate, my wife and myself had been called upon to defend, in the Adawlut, a possession which had passed into our hands with the consent of the deceased and with which his agreement, his letters, his language and whole conduct for the last ten years of his life had been consistent.

33. In such a case the first thing the Adawlut would have had to do would have been to ascertain the law to which the deceased was subject at the time of his death, and inasmuch as he was wholly exempt from the operation of the British Laws, the Regulations of Surat would of course have thrown no light on the matter. The case indeed would have been precisely the same in principle, as if the deceased had been of Dutch or French origin and had never been in British India, but, dying in his own country, had left some property in Surat to which there were conflicting claims of heirship.

34. The circumstance that the heirs were living under the Surat Regulations and subject to them in their own persons and property, would have formed no element in the question—for they might have been living in different places under different Codes, or some of them might have turned Hindoos. The Law of the deceased therefore, not that of his successors, regulates the succession.

35. Accordingly the Bukhshee and Meer Kumroodin filing a plaint against me and claiming shares under the Mahomedan Law of Inheritance, would have had to prove that that was the law of the deceased. I should have put in the Treaty and have cited the Agent to prove from his records, the manner in which the Nawab had always been treated by Government. It would then have appeared that the Nawab was invested with absolute power over his own private estate, that this power remained with him up to the very hour of his death, and that Government, during his life-time, had always refused to interfere in his domestic affairs. From whence it would have followed as a natural consequence that his acts and declarations in his life-time, however unsolemn or informal, if they clearly indicated a course of succession to himself, conferred a legal ownership at his death.

36. Satisfied of his intentions from his contract and his letters, the Court could not have set them aside for the want of a Will, for Wills are forms prescribed by Municipal Law for the persons subject to it, and are a restraint upon the natural and unqualified power of disposition of property which the Nawab and every other person owning no superior authority can at pleasure and therefore lawfully exercise.

37. And now that a false step has led to this property

being locked up for ten years, and has thrown the question "what is to be done with it?" on the Political Agent and not on the Adawlut, it may reasonably be supposed that the decision of Government will be consistent with the principles which regulated their conduct towards the deceased in his life-time, namely—of respecting his wishes and abstaining from all interference whatever with his own family arrangements, over which, in the language of Mr. Mountstuart Elphinstone, he had uncontrolled authority.

38. My wife Bukhtyarool-nissa Begum having died since the sequestration, leaving two daughters alive, I waive all personal claims in their favor. Not that the other claimants have anything to do with this, for the question before you is, who was or should be regarded as the deceased's heir at his death?

39. Unimpeachable and conclusive as I believe the preceding argument in support of the claims of my family to be, I am nevertheless conscious that I have to contend against a preconceived impression that the Mahomedan law furnishes the rule of succession in this case, and as the Bukhshee and Meer Kumroodin are claiming under that Law, it is necessary for me to examine the question at some length, but I confidently appeal to you whether the application of this Law to the present case has not been assumed from the very commencement of these discussions, and whether you can trace on your records any attempt, by your predecessors, to examine carefully the principles the assumption involves.

40. The ground on which it is taken for granted that the Estate must be divided under the Mahomedan Law, is really nothing more nor less than that the deceased *professed that religious faith*, and that if a Moolvee consequently

be called in, he will assign shares to persons filling the relationship of the other claimants to the deceased.

41. This may be conceded, and it amounts to no more than a simple definition of the rule of division in a case clearly governable by the Mahomedan law, but it leaves wholly untouched the broader question, whether the Government, legally or morally speaking, are bound to adopt the Mahomedan law *in this case* as the rule of division; and on such a subject, I submit to you, a Moolvee is the last person to resort to for assistance.

42. It is beyond all question that prior to the Treaty of 1800, the Nawabs of Surat were in the position of absolute Monarchs, subject to no restraint whatever in the government of their own families, or in the disposition of their own wealth; and that any expression of their intentions as to the devolution of their property after their death, would have been a positive law to their families and dependants, whether in accordance with the Mahomedan law or not.

43. The Nawabs, it has been proved, though Mahomedans, never adopted the Mahomedan code of inheritance in their own families, and this law therefore never attached itself, if I may so say, to their wealth. It is further clear that although the East India Company placed Meer Nusseerod-din Khan on the Musnud on the condition of his entering into the treaty of 1800, still he entered into that treaty as an independent power, owning no superior authority and as the person who confessedly had the legal right to transfer the exclusive Government and Revenues of Surat and its dependancies to the English. The recital in the Treaty which mentions that the Governor General and the Nawab were mutually desirous of providing more effectually for

the external defence of the City and for the security, ease and happiness of the inhabitants; the first article which declared that "the friendship between the Honorable English "Company and the Nawab Nusseeroddin, etc., was thereby "strengthened and confirmed, and that the friends and "enemies of the one should be considered the friends and "enemies of the other"; *the agreement* in the sixth article, as to the constitution of the Civil and Criminal Courts, and the seventh article, providing for the settlement of disputes where the Nawab's own relations and servants were concerned, establish plainly that Meer Nusseeroddin Khan acted, on the occasion, as a Sovereign Prince transferring to the Company all the dominion which as Nawab he had over Surat and its dependancies, its inhabitants and its revenues, but doing no more. What therefore he did not surrender remained as before, namely, his right to dispose of his own property and to govern his own affairs uncontrolled, and, so far, his position remained unchanged. And for the acknowledged correctness of this view, I refer you to Mr. Mounstuart Elphinstone's letter to the late Nawab, dated the 28th Rubee Assanee 1237 Hijree, and written in answer to his request for Military assistance to put down a disturbance in his own family, a part of which is as follows:—"Your Highness is the sole controller and authority "in all your affairs and transactions and in the inheritance "of your family without consulting others."

44. My argument on this point would be incomplete, however, if I were to omit to notice the opinion as to the legal position of the late Nawab, recorded by the late Agent Sir R. Arbuthnot, in the enquiry made by him in 1845 into the claims to the private estate. Sir Robert, who began the investigation with a thorough impression that the

Mahomedan law and nothing else must be the rule of division, and that any other view was not worthy of a moment's thought, as is apparent throughout the whole of his report, arrived at the conclusion that the Nawab was "to "all intents and purposes a British subject, amenable to the "general control of Government under Regulation XXV. "of 1827, in the same way as any other privileged person, "even to the sequestration of his property, had this been "necessary, at any time, for the payment of his debts; and "that, being a Mahomedan, it followed, *as a matter of* "*course*, that all disputes, to which he might have been a "party, would have necessarily been settled by the principles "of the Mahomedan law."

45. Sir Robert has confounded, in these not very clear observations, the power which the Government, from its strength, could exercise at pleasure over the Nawab, with the legal relationship which two independent parties entering into a treaty like that of 1800 hold towards one another. Had the Nawab possessed other large territory besides Surat and its dependancies, so as still to have retained independent rule, he would not, by virtue of that treaty, have been termed a British subject any more than the Guicowar or the Nizam would be, if they were now to give up a portion of their dominions under a similar arrangement. Of course the Nawab, with or without other territory, necessarily owed fealty and allegiance to the English Company in respect of his pension and share of the Revenues, but so equally would the Guicowar or the Nizam under similar circumstances, and however inappropriate the first article of the treaty may have been to the position of a Prince depriving himself of all his territory, still that treaty was beyond all question one of alliance, and neither party to it became the subject of the other.

46. It is quite true that practically the Nawab was, in all matters in which the British Government might think fit to advise or direct him, helplessly subject to their rule; but that circumstance is no element in the reasoning which would define his legal position. The power of the East India Company or the weakness of the Nawab would not vary, or entitle the British Government to destroy the independant relationship towards them which he contracted for under the Treaty, and it may be safely said, that so long as he did not render himself obnoxious to the British Government, they would no more have thought of interfering in the management of his private affairs or with his wishes in the devolution of his property, than they would, in the same particulars, have interfered with either of the chiefs before named.

47. The following case and letters, from one of which I have already made a quotation, seem to furnish conclusive proof of this.

48. After the death of Meer Nusseeroddin Khan, the late Nawab's father, various disputes arose between his widow Zeeaoon-nissa Larlee Begum and her son the late Nawab.

49. The widow having influence during her husband's life-time had obtained possession of the greater part of her husband's property, and the Nawab appealed to Mr. Elphinstone's Government for assistance. The following is the reply he received:—

"It was in a very happy time that I had the pleasure of receiving "your letter and have understood its contents. Whatever is pleas-"ing to your Highness is the source of happiness to us. *Your* "*Highness is the sole controller and authority in all your affairs and* "*transactions and in the Inheritance of your family without consult-*

"*ing others*, and there seems no reason for the Government to inter-
"fere; but you must consider that the Government always are an-
"xious to meet your Highness's wishes; the Agent is therefore
"instructed if necessary to afford you any assistance you require.—
"25th Rubee Osanee 1237."

50. At the same time Zeeaoon-nissa Larlee Begum complained to Mr. Romer, the Agent of Surat, that her son, the late Nawab, would not give her her share by the Mahomedan Law in her deceased husband's Estate as he had agreed to do.

51. Mr. Romer's reply, referring to Mr. Elphinstone's answer to the Nawab, is as follows:—

"I received your letter in good time. In that you mention some-
"thing about the displeasure between yourself and his excellency the
"Nawab. It should be very clearly and certainly understood by
"you that upon this subject, in the same manner as the former order
"of the Hon'ble the Governor had been conveyed, directing that the
"Hon'ble the Government disapproves of the thought of interference
"regarding such disputes as may be connected with the family of
"His Excellency the Nawab, it is impossible to do so. The same
"order is confirmed and held in force; what more shall I write.—
"Written on the 20th Zilkad 1238, or 29th July 1823."

52. The above correspondence speaks for itself and furnishes the best answer to Sir R. Arbuthnot's assumption that, the Nawab being a Mahomedan, all disputes to which he might have been a party, would necessarily have been settled by the principles of the Mahomedan Law.

53. There is an important element however in the question of the application of the Mahomedan Law of Inheritance to this case, which I desire to subject to a more detailed examination, and that is, did the late Nawabs of Surat, though absolute in their own affairs, nevertheless observe that law of succession in reference either to their public or their private wealth, and, particularly, has the

property of the late Nawab or that of his ancestors been encreased by contributions under the Mahomedan Law, from the estates of those two branches of the family of which the Bukhshee and Meer Kumroodin are now the representatives ?

54. If it has been, I cannot, of course, resist, on equitable grounds, the claim of the Bukhshee and of Meer Kumroodin to take shares from the estate of the deceased Nawab. On the other hand, if the Nawabs of Surat and their families have never taken any thing from the ancestors of the Bukhshee or of Meer Kumroodin, then the British Government are, on every principle of justice, bound to decline to drag-in the Mahomedan Law in favor of these distant relations to the prejudice of the Nawab's own daughter and his indisputable wishes and intentions in her favor.

55. Now the facts proved under this enquiry clearly shew that the Nawabs of Surat never did observe the Mahomedan Law of Inheritance; that the late Nawab did not inherit by virtue of it, but in opposition to it; and that his estate and those of his ancestors have never been encreased by sharing with the collateral branches of the family where the Mahomedan Law would have given them shares.

56. The usage of the family in this respect has been solemnly recorded in an instrument bearing the seals of the Nawab, of Meer Suddroodin Bukhshee and of Meer Shumsoddin, and which, as it was deliberate and is to this day unimpeached, is decisive on the point. The circumstances under which that instrument was made, completely confirm the family usage it declares.

57. It appears that the late Nawab's father, Meer

Nusseeroddin Khan, died in September 1821. Immediately whereupon, a violent dispute arose between his widow Zeeaoon-nissa Larlee Begum and her son the late Nawab.

58. Larlee Begum, during her husband's life-time, had principally managed his affairs, and, on his son succeeding to the Musnud, she declined parting with her authority.

59. It appears from the evidence of Atmaram Dewan, which is confirmed by the language of the agreement afterwards executed and exchanged between the late Nawab and his mother in December 1822, that she had possession of nearly all the state and private property.

60. The dispute had continued for about a twelvemonth, when the Nawab, to put an end to it, proposed as a bribe to his mother to give her for her own use a portion of the property, equal to the widow's share under the Mahomedan Law.

61. Atmaram Dewan's evidence is most important as to the character of this dispute, shewing that it never once took the turn of a question of Inheritance; on the contrary the widow made no claim to the widow's share, and the silence on this subject of both herself and her brother Meer Suddroodin Bukhshee who was assisting her in her contest with her son, is decisive to the usage not to divide.

62. The Nawab having made the offer coupled it with a condition which seems to have been at once acceded to, as we hear of no further dispute and the agreement was executed a fortnight afterwards. He required Meer Suddroodin the Bukhshee, and Meer Shumsoddin (the father of the present claimant Meer Kumroodin) to become parties to the transaction in a form which should preclude them or their descendants from ever fixing on the concession

to Larlee Begum as a precedent for urging claims of their own; and accordingly the 13th clause of the agreement drawn up on the occasion was as follows:—

"As above detailed, the eighth part that has been written out to "me by my beloved son, the Nawab, is merely in consequence of his "regard to my satisfaction and pleasure, *because such division never "hath taken place in this family during the five generations past.* "And henceforth if any of the relatives claim a share in an estate "of a deceased or living person, his claim is to be null and uncog-"nizable. *After my brother Meer Suddroodin Khan Sufdur Jung "Bahadoor (the Bukhshee) had consented to these terms, my beloved "son agreed to give the eighth part of the division to me.* Also my "brother Meer Suddroodin Khan Sufdur Jung Bahadoor has not, "and shall not have, any claim upon my beloved son for a share of "an estate of a dead or living person."

63. Now at the very moment that this solemn admission was being made by the then representatives of the collateral branches of the usage in the Nawab's family, the Bukhshee Meer Suddroodin Khan had, according to the rules of the Mahomedan law, two personal claims on the Nawab, that is to say, one in right of his wife Lall Begum to one-fifth of the estate of her father Nawab Hafizoddin Khan, and the other as the heir of his sister Hafiza Begum (who married and survived Nawab Meer Nizamoddin) to a share of one-eighth in his estate.

64. At the same time the Nawab's mother Zeaoonnissa Larlee Begum was entitled under the Mahomedan law to the daughter's share in the estate of the Bukhshee Meer Nujmoodin Khan and in that of her mother Rooshun Arakhanum, also to a sister's share in the estate of Meer Tajoodin, who had died without issue, leaving a large fortune, but which shares, as she had entered the Nawab's family, she never received or demanded. Her sister Ram-

zanee Begum and other members of the Bukhshee's family had, under the Mahomedan code, similar claims on the Nawab at that time.

65. They by thus abstaining from preferring them, substantially as well as verbally confirmed the custom, and this completely corroborates Atmaram Dewan's statement, that during Larlee Begum's dispute with her son, no claim of inheritance was made by her and that the concession of one-eighth to her, originated with the Nawab after months of ineffectual attempts, by other means, to end the dispute.

66. I pass over Sir Robert Arbuthnot's reasoning as to this agreement, for a great deal of it proceeds on an erroneous supposition as to the facts, but I may observe that it is strangely partial, inconsistent and illogical, and though I venture to affirm that a document more plain in its spirit and intention could not very well be penned than the agreement between the late Nawab and his mother, the late Agent professes not to understand it!

67. Evidence has been produced by the Bukhshee and Meer Kumroodin that the estate of Sufdur Khan was divided, and that Meer Nujmoodin Bukhshee and Nawab Meer Nusseeroddin Khan took shares, and the Bukhshee in his answer, filed in this enquiry, has mentioned that Fukhroodin Mahomud Khan a son of the 1st Nawab Meer Mooeenoddin Khan (who was the Great-grandfather of the last Nawab, the brother of the Great-grandfather of the present Bukhshee) had married a daughter of Sufdur Khan and was entitled through his wife to a share in Sufdur Khan's estate, but nevertheless Fukroodin Khan's nephew, Nawab Meer Nusseeroddin Khan, took possession of that share and would not give it to Fukroodin.

68. It is not very easy to see the application of these precedents to the present case.

69. You will perceive by a Pedigree of Begler Khan, signed and handed in by the Bukhshee to the Agent on the 19th June 1845, that Sufdur Khan who married Ushruth Khanum, Begler Khan's daughter, had by her one son and three daughters; one of these daughters, Mehtab Khanum, married Nawab Hafizoodin's younger brother Meer Fukhroodin, whose estate, as he died without issue, was taken possession of by Nawab Meer Nusseeroddin Khan. Sufdur Khan's son died in his father's life-time, leaving one daughter, Rooshun Ara Khanum, who married Meer Nujmoodin Khan Bukhshee.

70. Sufdur Khan died in A. D. 1762, being poisoned as was supposed by his relation Ali Nawaz Khan, who succeeded him in the Nawabship of Surat, and who, in all probability, took possession of the greater portion of his wealth.

71. A small part of it, however, not exceeding altogether about Rupees 10,000 in value, seems to have been preserved for the widow and four daughters of Sufdur Khan, and the same property appears subsequently to have passed into the hands of the Bukhshee Meer Nujmoodin Khan and the late Nawab's father Meer Nusseeroddin Khan and one Wulleeoddin Hossein son of Kamgar Khan who married a daughter of Sufdur Khan by his second wife.

72. The late Agent, Sir R. Arbuthnot, in referring to the first deed of distribution and after mentioning that Sufdur Khan had married a daughter of Begler Khan and had succeeded his father-in-law for a short time on the musnud, observes that it (the deed of distribution between the widow and children) tells rather strongly against the

rule of non-distribution which is now set up by the members of a family which claims its origin from the same Begler Khan.

73. Sir R. Arbuthnot has herein been entirely misled. The late Nawabs were Syuds. Begler Khan and his son-in-law Sufdur Khan were Moguls.

74. Begler Khan never was Nawab of Surat. He had charge of the Castle whilst his brother Teg Begh Khan was Nawab.

75. The first Nawab of the late reigning family Meeah Uchchun married a daughter of the Killadar Begler Khan and thus became a brother-in-law of Sufdur Khan.

76. Sufdur Khan's son Wakar Khan having died in his father's lifetime and Sufdur Khan's successor having usurped not inherited the musmud and being under no obligation to maintain the widow and four daughters of his predecessor, it may well be asked how the division of some small property of Sufdur Khan's large property amongst his widow and children furnishes an argument in refutation of the existence of an usage (not to divide) in a totally different race and family, a member of which happened to marry a sister-in-law of Sufdur Khan?

77. The other examples given in the Bukhshee's answer, which, however, have not been proved, are some instances in which his branch of the family have divided among themselves, but neither he nor Meer Kumroodin have been able to point out a single instance, in falsification of the custom stated in the agreement, or in which, in the case of division in their families, a Nawab of Surat has taken the share to which he was entitled by the rules of the Mahomedan Law.

78. But it may be argued that the Nawab having left no male issue and the title having become extinct, the custom and the reason for it have expired together.

79. This, if correct, would not justify a leap to the conclusion that the Mahomedan code had therefore become the rule of division and that collateral and distant relatives who have never heretofore contributed to the Nawab's estate should now share in it with his daughter.

80. Besides, the custom of the Nawab's family is clearly established in this enquiry to have been, not simply that of placing the whole estate whatever it might be in a single male hand. It went further and did not allow the estate to be either encreased or diminished by sharing with the collateral branches; and this being so, what is there in the circumstance of the Nawab having left female and not male issue, to give these collaterals a right to have the custom set aside.

81. A circumstance connected with the Bukhshee's betrothal to Shahzadee Begum has been brought forward by him, which, although it has not been proved, I am unwilling to allow to pass altogether unnoticed.

82. Shahzadee Begum was the only daughter of the late Nawab's brother Meer Khyroodin; she was betrothed to the Bukhshee in the lifetime of the late Nawab's mother Zeeaoon-nissa Larlee Begum, and by her, and the late Nawab, who had no affection for the Bukhshee or his relations, continually refused to allow the marriage to be completed.

83. At length the Agent Mr. Sutherland interfered with his advice, and Ardaseer Bahadoor, the native Agent, accordingly pressed the completion of the marriage on the Nawab, who reluctantly assented, but made it a condition precedent that the Bukhshee should agree to abide by the

terms of a paper which Ardaseer took to him by the Nawab's desire.

84. This the Bukhshee declined, and he alleges that the paper was a release on his part of all claims to inherit to the Nawab, and he brings this circumstance forward as an argument that the Nawab therefore regarded him as his heir, or as one of his heirs.

85. Ardaseer, in his deposition, states that the paper related amongst other things to some claim of inheritance, but whose inheritance or what inheritance, and under what right or title, he cannot say.

86. The fact, therefore, alleged by the Bukhshee in connection with this transaction and on which his argument hinges, falls to the ground; but I cannot help observing that it seems obvious that the claim, which he at that moment was called upon to give up, could not have been one that had been virtually disposed of by the agreement between the Nawab and his Mother a few years previously, and which had been solemnly ratified by Meer Suddroodin Khan Bukhshee the claimant's own father, and his relation Meer Shumsoddin; but it must have been some claim which the marriage would have given the Bukhshee a colour for advancing, as for instance, Shahzadee Begum's share of her own father's estate and which he might have demanded in her right.

87. The Nawab's assent to the marriage being made dependant on this release being signed by the husband, it seems an inevitable inference that it could not have had reference to a possible claim at a future day, which the marriage could in no degree assist and which depended on contingencies altogether irrespective of it.

88. But still taking the fact to be in all respects as the Bukhshee alleges it, what would it prove? Clearly no

recognition of a legal title in him to inherit to the Nawab, but simply that the latter having other plans for the succession to himself and not having obtained the sanction of the British Government to them, felt that the Bukhshee would prove a formidable obstacle in his way, if the Government were to say that the succession to the dignity and Pension must be regulated by the Mahomedan law. The natural explanation of the demand of any such release from the Bukhshee, as he alleges is, that it was a measure of precaution, to remove a possible obstruction in the way of the Nawab's own plans being carried out, and the fact, if true, is certainly very emphatic proof that the Nawab never meant to leave the Bukhshee any thing, and as the title and the Pension are not in question to-day, but the enquiry is simply what shall be done with the Nawab's private estate? the above circumstance is, I submit, very adverse to the merits of the Bukhshee's claim.

89. The preceding examination of the question whether the Mahomedan law should be the rule of division in this case, has proceeded on the supposition that the Bukhshee and Meer Kumroodin are legitimate according to that law, for if they are not, however much they may have been acknowledged by Government, or the Nawab, or by one another as legitimate members of their own families, their claims on the private estate of the Nawab under this enquiry are at an end.

90. It may be remembered that the Bukhshee and Meer Kumroodin are the Great-great-grandsons of the late Nawab's Great-great-grandfather. Their claim begins and ends with the strict application of the Mahomedan Law in their favor. As before stated, they have no merits to advance of any description whatever. They know very well that they are claiming in opposition to the intentions of the late Nawab and the rule of his family,

and they have taken the opportunity of this enquiry to throw every scandal and discredit in their power on the daughter and widow of the person whose estate they are claiming.

91. Now by the Pedigrees signed by all parties and recorded by you, it is admitted that the Mothers of the Bukhshee and of Meer Shumsoddin the father of Meer Kumroodin were never married.

92. The Bukhshee, to support his legitimacy, has offered evidence to prove that his mother, Boa Goolrung, was purchased by his grand-father Meer Nujmoodin Khan. A deed is put in, from which it appears that the purchase was actually made by a person named Meeah Bussuth who is described, in the deed, not as a slave or a servant but as "a dependant" of Meer Nujmooddin Khan.

93. It is improbable that a person, in Meer Nujmooddin Khan's position, would have purchased a slave or other property *in the name of one of his dependants*, as the only persons he had to fear or guard himself and family against in case of death, were those very dependants, who might set up purchases made in their names as their own. It is said that Boa Goolrung, when bought, was about 8 or 9 years of age, that she was placed in charge of a singing girl, and that about a year after Meer Nujmoodin Khan's death, his son Meer Suddroodin Khan cohabited with her and that she gave birth to the present Bukhshee.

94. Taking the purchase of Boa Goolrung as it appears on the face of the Deed, the evidence stands thus: Meer Suddroodin cohabits with the slave of another person, and, by the Mahomedan law, no acknowledgment of Parentage can make their issue legitimate.

95. Meer Kumroodin has offered evidence to shew that Neeaz Banoo, the Mother of his father Meer Shumsoddin, was a slave of the Nawab Meeah Uchchun and

was part of the Dowry of his daughter Medina Begum on her marriage with the claimant's grandfather and that Medina Begum, presented Neeaz Banoo to her husband, to deter him from a second marriage! And that Meea Shumsoddin was the issue of their cohabitation.

96. Thus it will appear that these two claimants are illegitimate, unless the mother of the one and the grandmother of the other were the lawful slaves of their respective parents in the same degrees.

97. Now there are no principles of the Mahomedan law more clear or which have more often been established in the Indian Courts of Judicature than that those only are legitimate who are begotten on the principal or inferior consort of the father, that is, either in marriage or on legal slaves, and that those only are legal slaves who have been captured by Isteela by a Mahomedan ruler in an infidel country or the descendants of such.

98. In proof of which I beg to refer you to the following cases in Macnaghten's principles and precedents of the Mahomedan Law, that is to say to case II. at page 312, to cases III. and IV. at pages 318-19, to case VII. at page 322, to case IX. at pages 324-5, likewise to reply III. at page 359, to case XLVII. and Mr. Macnaghten's note thereon at page 302.

99. These and others that might be referred to, are all decisions of the Courts of Law in Bengal, and are published as the present law of the land, although it is well known that legal slavery has been extinct in India for ages.

100. In his prefatory discourse, at page 30, Mr. Macnaghten observes: "The question of Mahomedan "slavery seems to be but little understood; according to "strict law, the state of bondage, as far as Mussalmans are "concerned, may be said to be almost extinct in this coun-

" try. They only are slaves who are captured in an infidel "country in time of war, or who are the descendants of " such captives. Perhaps there is no point of law which " has been more deliberately and formally determined than " this. Its accuracy, it might have been hoped, was estab- " lished beyond all question ; and yet it is only very lately " that a contrary opinion was delivered by a Law Officer to " one of the Courts of Judicature under this Presidency. " I subjoin it, with a translation, as a curious specimen of " the arguments and devices not unfrequently used to mis- " lead and perplex the simplest question." And at page 39 the same author observes, " Of those who can " legally be called slaves but few at present exist. In the " ordinary acceptation of the term, all persons are counted "slaves who may have been sold by their parents in a " time of scarcity, and this class is very numerous. Thou- " sands are, at this moment, living in a state of hopeless " and contented though unauthorized bondage. That the " illegality of this state of things should be known is cer- " tainly desirable."

101. In support of the above authorities I might refer you to many texts, but the propositions contended for are elementary and are not the subject of controversy amongst Mahomedan Doctors, and, according to the precedents from Macnaghten, are not modified in the Indian Courts of Judicature.

102. It is no doubt true that many are the instances in which, where no dispute on the point has arisen or where no attention has been directed to the subject, persons have been accepted, and, with the connivance of the law officers, have passed, as Mahomedan heirs, who have been born of free women nominally called slaves, but it is confidently believed that no judicial precedent can be cited in which the issue of a purchased slave have been held legitimate where

the legitimacy has been impugned on the ground that the mother was not a legal slave according to the Mahomedan law.

103. Now the Bukhshee and Meer Kumroodin are insisting on the rigid application of the Mahomedan law in their favor. Be it so; then I claim the right of impugning their legitimacy by that Law. If the Mahomedan law allow the inheritance only to a child born in lawful marriage or begotten on a slave captured in an infidel country, then it is incontestible that a party only can claim a share who can bring himself within these conditions.

104. The law of legitimacy and the law of succession are one and the same. The law that distributes an estate in a particular way, declares what circumstances constitute a legal sharer.

105. It is quite true that the Bukhshee and Meer Kumroodin have been recognised as legitimate in their own branches of the family, that the Nawab treated them as relations and that their title has not been questioned by Government. But the answer to this is clear and decisive. They cannot have the benefit of the Mahomedan law in their favor as to shares and disregard it as a test of their legitimacy. They cannot claim the law of the Nawab as to legitimacy and reject it as to succession.

106. I mentioned to you however through my counsel, when it was first proposed to try my late wife's legitimacy by the Mahomedan law, that I did not claim under that law, nor see consequently how the result of the enquiry could affect her title, as the only daughter of the Nawab, to his estate—because, whether she would be regarded as strictly legitimate or not, if the deceased had been a subject of the Company, living and inheriting under their Regulations, and knowing consequently that those of his issue only would share in his estate whom the

Mahomedan Law would pronounce legitimate—the test of legitimacy was quite a different one when applied to the issue of a Mahomedan Prince owning no law, but his own will and pleasure, in the regulation of his family and the distribution of his wealth, and following just as much and no more of the Mahomedan Law in civil affairs as he thought proper; and to him it was quite competent to recognise as legitimate—that is, as his heirs—any of his own issue from whomever sprung, and the Nawab having recognised my late wife as his daughter and his heir, there is no other test of legitimacy to apply to her.

107. I think I have now shewn you that the estate cannot, on legal or equitable principles, be divided according to the Mahomedan Law; that it would be extreme injustice and a violation of the compact and wishes of the deceased so to divide it, and an interference in his family arrangements quite inconsistent with the studious delicacy preserved towards him by the British Government during his lifetime; and, lastly, that even if the Mahomedan Law be the rule of division, the Bukhshee and Meer Kumroodin cannot bring themselves within its conditions.

108. I now proceed to notice the claim of Padshah Begum, and I have separated her case from those of the Bukhshee and of Meer Kumroodin, because, if she be really the widow of the deceased Nawab, she, as such, may have claims to consideration quite independantly of the Mahomedan Law, for the late Nawab no doubt contemplated that those who succeeded to his Pension and wealth would maintain the females of his family in the same manner as he had done in his lifetime.

109. Now it is not my fault that an enquiry has taken place into the question whether Padshah Begum was divorced by the late Nawab or not. I was never desirous

of bringing this forward. On the death of the Nawab, I sent to assure her that she should be maintained as in his lifetime and I invited her to come into the palace. This she declined, and she has ever since done her uttermost to load my deceased wife and mother-in-law with every possible obloquy.

110. It has been suggested, by the cross-examination of the witnesses produced by me on this point, that the allegation of Padshah Begum's divorce is a new matter. This, however, is not so; you will find it adverted to in the very earliest memorials. In proof of which, I refer you to para. 12th of Ameerool-nissa Begum's Persian letter to Mr. Elliot, dated the 27th August 1842, and to Meer Surfaraz Ali's letters to the Governor of Bombay, dated the 24th October and the 9th and 23d November 1842.

111. It is also suggested that had Padshah Begum been divorced, the Nawab would not have continued to maintain, but would have sent her back to her family at Broach.

112. This I deny to be the necessary consequence of a divorce in a family of high rank. On the contrary, it is quite consistent that it should have occurred, and that the Nawab, not wishing to expose his own family affairs, particularly in such a matter as a divorce, should have permitted Padshah Begum to reside where she did, should have paid her a small maintenance, and have allowed her to travel to Broach with some of the state of the character she was ostensibly filling. Meetaram Dewan, Mahomud Ali Beg, and Jeegree Begum the widow of Meer Khyroodin the late Nawab's brother, depose to expressions of the Nawab which shew that this really was the case, and it is well known that however common divorces may be in Persia and Arabia, they are exceedingly rare in India and are regarded amongst the Nobility as involving some degree of discredit.

113. Mahomud Ali Beg, Dowlut Ufza, and Beebee Shurfun the adopted daughter of Nawab Meer Nizamoddin, have clearly deposed to a divorce being declared by the Nawab at a point of time which will be found substantially to agree with the period acknowledged by all the witnesses of Padshah Begum to be the date of the complete separation between her and the Nawab.

114. Bukhtyarool-nissa Begum's Bismillah took place in April 1826; Zeeaoon-nissa Larlee Begum the Nawab's mother died in 1828. Beebee Shurfun and Dowlut Ufza both say that Bukhtyarool-nissa Begum was about five or six years old at the time when the Nawab declared that he had divorced Padshah Begum.

115. The witnesses examined on her behalf acknowledge that the Nawab's entire abstinence and separation from her, commenced from the death of his mother Larlee Begum.

116. Now which, I ask, is the more probable of the two allegations? that Padshah Begum remained the Nawab's wife during all this abstinence—entirely excluded from his Zanana—from all communication with his Ladies—not even admitted to family meetings, ceremonies, etc.—or that she was, what these circumstances almost themselves establish and strongly indicate, namely—lawfully separated from him, but maintained by him for the sake of his character and family.

117. With every desire to assist her case, the witnesses produced by Padshah Begum can mention only two instances in which the Nawab saw her during a long separation of so many years, and these were occasions of sickness, on which, it is said, the Nawab visited her.

118. It is perfectly clear that she was not admitted to see him when he was dying, and I ask you whether you can believe that he went to see her when she was sick, and whether these visits and the enquiries represented to have

been constantly made after her, are consistent with a separation from her on the part of himself and family, so entire, so resolute, and in many respects so severe, towards her, as that which confessedly existed.

119. Yar Mahomud, one of the witnesses who has deposed to one of these visits, states that it took place about four or five years before the late Nawab's death, whilst he has confessed that he was himself dismissed the service about seven or eight years before the Nawab died.

120. Seedee Jowhur, another of the witnesses called to speak to the attentions paid to Padshah Begum, admits that he never went near the Palace after the late Nawab began to reduce his pay, and that this occurred about six years after the death of the Nawab Meer Nusseeroddin Khan, which took place in September 1821.

121. Seedee Roomee, the thick-and-thin partizan of Padshah Begum, would desire to have it believed that there really was no quarrel between her and the late Nawab and that her unwillingness to expose herself to the servants alone kept her from the Palace.

122. Reliance has been placed on some papers shewing distributions of sherbet and mangoes and on entries in the Dufturs in which Padshah Begum is spoken of as the "Broach Mehel."

123. It is not very easy to discover what this title establishes or is supposed to establish. Mohunlall Moonshee, however, has deposed that the Nawab did not dictate to the writers how the Ladies of the establishment were to be mentioned in the Dufturs, and that the Mehtas described them according to the old custom.

124. The Purwanah put in on the occasion of Padshah Begum being about to proceed to Broach, would shew a large Sawaree; but it does not appear, and it is not indeed probable, that the Nawab had anything to do with this, whilst, as the Purwanah, on the face of it, was applied for

for the "Nawab's family," a suitable Sawaree was necessarily named in it—but it does not at all follow that that number of attendants really accompanied the Begum to Broach, nor is it consistent with probability and her treatment in other respects, that she had so large a retinue. It is no uncommon thing to exaggerate the intended Escort in such cases. The Purwanah may have been applied for by one of Padshah Begum's brothers, and, by itself simply, proves nothing.

125. It is acknowledged by Rahmutool-nissa Begum, the step-mother of the Bukhshee, that on the death of the late Nawab, she and other Mahomedan Ladies in the City paid the usual visit of condolence to Ameerool-nissa Begum as the widow of the deceased and remained on this duty in the Palace for three days, and that during that period no one paid the same mark of respect to Padshah Begum, and Rahmutool-nissa Begum did not even see Padshah Begum until two months afterwards, at which time the latter had joined the Bukhshee in opposition to my mother-in-law and late wife.

126. It is clearly proved to you that up to the time of the Nawab's death, Padshah Begum received only Rupees 30 per mensem and dry food from the Palace and about Rupees 150 yearly for clothing, until the marriages in 1833, after which period this last allowance was stopped.

127. Whether, under these circumstances, Padshah Begum is to be considered one of the widows of the deceased, is a point I am quite content to leave in your hands. I never desired to enter into this question, nor did I force it on the late Agent Sir Robert Arbuthnot, and this Lady has herself alone to thank for its being an object of enquiry now. But assuming that she is entitled to be considered one of the deceased's widows, the following, I submit, is a sufficient answer to her present claim.

128. It cannot be supposed that the Nawab intended

that his heirs, receiving even the whole of his pension of Rupees 1,50,000 per annum and his private wealth, should do more than continue the same provision to Padshah Begum that she received in his life-time. But the Government, who have scarcely allotted one Lakh of Rupees of the Pension amongst the family and dependants, have awarded to Padshah Begum Rupees 14,400 per annum as her share, being Rupees 1,200 per mensem, whereas, if the whole Pension had been divided amongst the heirs by the Mahomedan Law, her one-sixteenth share, as one of the two widows, would have been Rupees 9,375 per annum.

129. As therefore she has profitted so largely by the decease of the late Nawab and has received a maintenance so much beyond his intentions, or her claims even as a Mahomedan widow, she has, I submit, under the circumstances before you, no legal or equitable ground on which to rest a demand to take a further portion of His Excellency's estate from his recognised heir.

130. The only remaining claim is that of Meer Bahadoor Shah, with respect to which it is sufficient to say that he is claiming a share in the estate of the first Nawab of the family, Meer Mooeenoddin Khan otherwise Meeah Uchchun, whose estate at his death passed into the hands of his successor, who was then the lawful Ruler of the country and was under no legal obligation to divide according to the Mahomedan Law. But further the present subject of enquiry is the succession to the Estate of the last Nawab and not to that of his ancestors or any of them.

131. It seems necessary, before closing this reply, to notice an argument raised in Meer Kumroodin's answer founded on Act XVIII. of 1848.

132. He appears to contend that that Act directs the distribution of the late Nawab's estate amongst his family and recognizes the persons in the Schedule to the Act as constituting that family.

133. If this were the sound construction of the Act, the whole enquiry you have been engaged in has been useless, and the only thing required was to ascertain the Mahomedan Law of Inheritance applicable to the Estate of a person of that religion who had died leaving the relations mentioned in the Schedule; but this, I apprehend, would be to push the intention of the Legislature far beyond any thing they ever contemplated in passing that measure.

134. The Act expressly abstains from prescribing the Mahomedan Law as the rule of distribution. It is significantly silent on this head, notwithstanding the report of Sir R. Arbuthnot in favor of that rule of distribution in November 1845, and the Act has left the whole question open for further consideration, the Supreme Government being aware, from the numerous memorials on its records, that the case is not simply that of a Mahomedan subject dying within the Company's territories and subject to the Mahomedan Law of Inheritance, but is one of a very different and of a more complex character, and as the Act was not intended to shut out other claimants than those named in it and who might belong to the family, nor to prevent me questioning whether Padshah Begum was really the widow of the deceased or others denying the legitimacy of my children, so it equally leaves open to Government to define the principles on which the Estate should be distributed after a full consideration of all the circumstances which may be submitted to you by each claimant in his favor.

135. In the preceding observations I have left a large portion of the evidence taken before you wholly unnoticed, as the nature of the argument advanced does not require me to go into every corner of the enquiry.

136. When it appeared that the Bukhshee and Meer Kumroodin could not prove a single case of division in the Nawab's family, and further could not shew themselves to

be legitimate by the Mahomedan Law, it seemed quite unnecessary for me to examine the testimony as to the circumstances under which my mother-in-law entered the family, &c. Moreover I have not been able to contemplate any thing so startling or improbable as that Government would forcibly take away the Nawab's private estate from his only daughter and myself, in whose hands he left it and in whom all his hopes and affections were centred, to give it to distant relatives merely on some doubts connected with her strict legitimacy under the Mahomedan Law.

137. As, however, I am aware that the subject will be entered upon most fully and unsparingly by the opponents, I feel bound to guard myself against the mis-construction which absolute silence in regard to it might expose me to; for it is evident that a false case on this point has been brought forward by one party or the other, and that leaves me no option but to advert to it.

138. You must have felt in the beginning that you were prosecuting the enquiry into the legitimacy of Ameerool-nissa Begum's issue under circumstances the most unfavorable for arriving at any certain or definite result. That lady came into the family confessedly very nearly 40 years ago. Her admission was not a transaction of which there is, or it is likely there would be, written evidence; and if you deem it necessary to give any opinion on the weight of the evidence taken on this subject, you will have to steer your way through loose oral testimony, collected from a family and household in which there have been bitter feuds ever since the death of the late Nawab's father, Meer Nusseeroddin Khan, in September 1821.

139. You have however the Nawab's own statement at the time of his marriage with Ameerool-nissa Begum that she had been his slave and that he had emancipated her, and in distributing his estate you surely have no right to question his word and to take that of his dependants.

140. It must be apparent that the Nawab could scarcely in those days have contemplated any event arising in which the legitimacy of his own issue would come into question, and that he would not have openly proclaimed two useless falsehoods in the face of his own family and dependants, namely that Ameerool-nissa Begum had been a slave and that he had emancipated her.

141. Moreover as matter of proof the written statement of the principal parties at the time of the marriage when no question had arisen, is surely better than the evidence collected from partizans after bitter feuds have existed.

142. I will not attempt to examine in detail the evidence of Seedee Roomee, Seedee Sohyll and Seedee Jumshid or others to the contrary of the Nawab's own recorded statement. It is sufficient to say that although their depositions in chief, as to the finding of Ameerool-nissa Begum in the compound and what took place in the morning, were given with all the unhesitating precision of an affair of yesterday, and although it was a necessary part of such an occurrence as they were describing that many enquiries should have been made respecting a girl brought before the Nawab under the circumstances represented and that sooner or later if not then, something would have been found out and known regarding her origin and family, yet not one of these witnesses was able to say from information acquired then or subsequently what was her name, where she had come from, who were her parents or relations, what was her caste or even whether she was a Hindoo or Mussulmanee, and this comprehensive ignorance (of every one of the witnesses) I take leave to say is so incredible in a *real* transaction of the kind, that no reasonable person can accept their statements as a true history.

143. This is not the first time these witnesses have appeared in enquiries connected with the late Nawab's

affairs. I beg to refer you to the proceedings of the late Agent, Sir R. Arbuthnot, on the disgraceful claim made by the Bukhshee, as the husband of Shahzadee Begum, to a very large property, under a deed of gift from her grandmother Zeaoon-nissa Larlee Begum. Sir R. Arbuthnot, in throwing out the claim, concluded his observations as follows :—

" The attempt to shew that the Begum just before her death as-" signed over the whole of her property to Seedee Roomee as the " guardian of her grand-child and that it was actually in his posses-" sion and under his management for sometime before it was seized " by the Nawab, tends of itself to throw a doubt on the validity of the " deed under which the claim is now made; but being in no way " supported by proof—if we except his own evidence and that of " Seedee Jumshid, both of them Eunuchs on the establishment of the " late Nawab, entirely in the interests of Shahzadee Begum and the " Bukhshee and on whose veracity I place not the least confidence—is " wholly undeserving of attention."

144. When Mr. Elliot originally enquired as Agent into the early history of Ameerool-nissa Begum, he in like manner rejected the evidence of Seedee Roomee, Seedee Jumshid and Seedee Sohyll as wholly unworthy of credit. These then are the dependants of the late Nawab whose word is offered in opposition to his statement respecting his own wife. They are, and have been ever since the death of the Nawab, under the protection of Padshah Begum and the Bukhshee, and have been the chief witnesses produced by them on every enquiry that has taken place relating to the late Nawab's affairs.

(Signed) JAFUR ALEE.

SURAT PALACE, *4th May*, 1852.

No. 46 of 1852.

Bombay, 25th September, 1852.

To A. MALET, Esq.,

Chief Secretary to Government.

SIR,

Having understood that W. E. Frere, Esq., the Agent for the Right Honorable the Governor at Surat, has sent in his report to Government on the claims made by myself on behalf of my children and by other parties to the private Estate of his Excellency the late Nawab of Surat; I have the honor respectfully to request that His Lordship in Council will be pleased to favor me with a copy of the report.

I am well aware that, as a general rule, it is not the course and usage of Government to furnish copies of reports from its office; but every suitor is entitled to a copy of the Decree passed in his favor or against him in the Adawlut, and the enquiry which has recently been held by the Agent, though occurring in the Political Department, is purely a judicial case, involving simply rights of property, and has no political aspect whatever. As it was held openly by the Agent with all the forms of a Court of Justice, I naturally expected that his decision would have been announced, and that the parties dissatisfied would have had an opportunity of objecting to it before its final confirmation by Government.

The amount of property at stake is very considerable and the principles of law involved in the recent inquiry are

very important, and, in some respects, novel ; and I feel persuaded that the accident, for it is no more, that Mr. Frere has had to enquire into the respective claims as the Agent, instead of disposing of them in the Adawlut, will not be permitted by His Lordship in Council to operate against the right of all parties to convass the Agent's reasoning as fully as they would have been entitled to, if the same question had come before Mr. Frere in his capacity of Zillah Judge.

That justice requires this, I beg very respectfully to add will be apparent to His Lordship in Council, from the following considerations.

When his late Excellency died, the whole of his property and affairs passed naturally into the hands of his only surviving child, my late wife, and myself. Living with the deceased since my marriage up to the hour of his death—known to all the household and dependents as their future master—the title of my wife and myself to take possession of every thing was at once recognized. All looked to me on his Excellency's decease for orders. I superintended the funeral, took charge of every thing and remained in undisturbed possession for some months, granting receipts for the rent in my own name, expending it on the family with much more besides, and managing all the affairs as in the deceased's life-time.

With this state of things, the Agent for the Honorable the Governor, whose functions may be said to have ended with the Nawabship, had no right to interfere. The privileges of the family being declared to be at an end, it is obvious that my wife and myself could only be legally deprived of the Nawab's estate by the course laid down in the Regulations, and those who claimed a right to share in the estate in opposition to us, should have been referred to the Civil Courts for redress.

If, instead of now appearing as rival claimants with the other parties to the private estate of His Excellency, my wife and myself had been called upon to defend, in the Adawlut, a possession which had passed into our hands in the dire and natural course of events; I should of course have had the fullest opportunity of appealing to higher authority, against the decision of the Zillah Judge, if unfavorable to my claims.

The late Agent, Sir R. K. Arbuthnot, having, at the end of seven months from the Nawab's decease, on the petition of the other parties, illegally sequestered his Excellency's estate in the hands of my late wife and myself, it became necessary to empower the Governor of Bombay in Council by legislative enactment* to dispose of all claims thereon; and thus the present enquiry has occurred in a Court presided over by Mr. Frere as Agent, but in all respects a Court of Judicature.

The Agent, Mr. Frere, not having announced to the parties before him the conclusion he had arrived at, I am of course ignorant whether he has set the claims of my children aside or not; but my legal advisers feel so confident in the strength these claims possess, and I am myself so thoroughly convinced of their justice, that I am naturally very anxious that an enquiry, thus openly begun, should not close in secret, feeling confident that I can furnish solid grounds of reply to the Agent's reasoning, if it is adverse to the case I laid before him.

Under these circumstances, I respectfully request that I may be put in possession either of the report of the Agent or of so much of it (if there is any objection to allowing

* Act XVIII. of 1848, Sec. II.

me to see the whole) as will fully develope to me the judicial views and reasoning of the Agent in the late enquiry, and, if they have been adverse to me, that His Lordship in Council will be pleased to suspend his opinion until I shall have had an opportunity of submitting some observations by way of appeal to Government and which I will forward with all possible dispatch.

I need scarcely add that I am asking for no exclusive privilege for myself and that I am fully sensible that the same concession should be made to the other parties.

I have the honor to be,

Sir,

Your most obedient servant,

(Signed) JAFER ALI.

No. 5148 of 1852.

From A. MALET, Esq.,

Chief Secretary to Government, Bombay,

To MEER JAFFER ALI KHAN, Bahadoor, Bombay.

Dated, 23rd November, 1852.

Political Department.

SIR,

In acknowledging the receipt of your letter dated the 25th September last, soliciting that you may be furnished with a copy of the report which has been submitted to Government by the Agent at Surat, relative to the claims to succession to the private Estate of His Excellency the late

Nawab; I am directed by the Right Hon'ble the Governor in Council to inform you, that in common with the other claimants, you will be furnished, by Mr. Frere, with a copy of his award, and that the execution thereof will be delayed for the period of ninety (90) days from the date of the same being furnished to the claimants, to admit of any representation being intermediately made to Government by parties who may be dissatisfied with the Agent's decree.

I have the honor to be,

Sir,

Your most obedient servant,

(Signed) A. MALET,

Chief Secretary.

Bombay Castle,
23rd November, 1852.

Decision on the Claims urged by parties to be recognised as Heirs of His Excellency the late Nawab of Surat and to share in the Property left by him.

1st. On the 8th August 1842, Meer Ufzuloddeen, Nawab of Surat, died, leaving no son surviving him. The title thereupon was declared Extinct, and the property taken possession of by Government; and, on the 26th August 1848, Act XVIII. of that year was passed, vesting the Government of Bombay with powers to administer to the Estate, and after settlement and payment of the claims against the Nawab at the time of his death, to make distribution of the remainder among his family.

2d. Of those claiming title to the property as heirs, seven different classes arose, who will be enumerated in the order in which they presented their Petitions to the present Agent.

3d. The first, consisting of Abdool Rehman and four others, claiming a share in the property derived to Ufzuloddeen from his grandfather Hafizoddeen, as representatives of his (Hafizoddeen's) wife Fukroon-Nissa Begum, the property never having been divided.

Secondly—Meer Jafur Alee Khan Bahadoor, the husband of the Nawab's sole surviving daughter Bukhtyarool-Nissa Begum, claiming after her death, on behalf of her children, his two infant daughters, the whole property, to which they say they are entitled by the custom of the Nawab's family.

Thirdly—Ameerool-Nissa Begum, widow of the late Nawab and mother of the late Bukhtyarool-Nissa Begum, who urges her claim to a share only in the event of her grand-children's title to the whole property being thrown out.

Fourthly—Meer Surfoodeen, alias Bahadoor Shah, who claims a share as heir of Mudina Begum sister of the late Nawab's grand-father Hafizoddeen, whose property descended undivided to Meer Ufzuloddeen, who died the last member of the family.

Fifthly—The late Nawab's widow, Padshah Begum.

Sixthly, and Seventhly—Meer Mooeenoddeen Khan and Meer Kumroodeen Khan, the representatives of Zealoddeen alias Syud Nuthun, the brother of the late Nawab's great-grandfather Meer Mooeenoddeen Khan alias Syud Uchun, the first Nawab of Surat of the Syud line.

4th. All these, with the exception of Meer Jafur Alee or rather his daughters, claim under the Mahomedan law. Meer Jafur Alee, however, contends that the Nawab was an independent Sovereign, that his family never observed the rules of the Mahomedan law of Inheritance, that the late Nawab always intended to make him and his children his heir, and that, according to the custom of the family and the Nawab's own intention, his children are entitled to the whole of the property.

5th. It is not necessary to enter into a history of the Nawabs, nor any detail of how the British authorities obtained possession of Surat, (the Nawabship of which was originally a fief of the Empire of Delhi,) further than to remark that, after having entered into various treaties, the authorities at Surat, in 1759, made over the Castle with its immunities and emoluments to the English, and that this grant was confirmed from Delhi in the latter part of the same year. The Nawab, Syud Mooeenoddeen, died in 1763

and was succeeded by his son Meer Hafizoddeen, by the nomination of the Bombay Government, without reference to the Court of Delhi; and he dying in 1790, was succeeded by his son Nusseeroddeen, father of the late Nawab Ufzuloddeen.

6th. In 1800, Nusseeroddeen entered into a treaty with the British Government, by which, in consideration of a Pension of a Lac of Rupees per annum payable from the revenues and one-fifth of the revenue safter that Lac was deducted, (subsequently commuted for Rupees 50,000 per annum, making the whole one and a half Lac,) he made over the whole of the revenues, territories, and civil and military government of the City and its dependancies to the English; reserving, however, by the 7th article, exemption to himself, his relations and servants, from the jurisdiction of our courts of justice and the operation of our laws.

7th. The terms of this treaty were observed up to the death of Meer Nusseeroddeen in 1821, and after that during the life-time of the late Nawab, who dying as mentained in the 1st para. in 1842 without male issue, the Nawabship and Pension were declared by Government to be at an end, and it remained to be decided who were the Nawab's heirs and entitled to his property.

8th. It is suggested rather than asserted by Meer Kumroodeen in his answer, but more strongly urged by him in para. 19 and by Padshah Begum in para. 25, (while Meer Jafur Alee in para. 131 is at great pains to refute it) that Act XVIII. of 1848 declares who the Nawab's family are, and as distribution of the remaining property, after payment of debts, is to be made "among his family," that there can be no doubt that the property must be divided and that it is to be apportioned among those whose names are mentioned in the Schedule to that Act. But it appears to be assuming too much to declare that Act to be decisive

of either question: the Act certainly provides that the property, after payment of debts, should be divided among the Nawab's family and also mentions certain persons as members of the Nawab's family, but it does not prescribe in what shares it is to be divided, nor according to what rule the division is to be made, nor does it imply that there may not be other members of the family besides those there enumerated; for those whose names are mentioned in the schedule are entered not as precluding others from being heirs but as conferring on them certain privileges to which no others are entitled. But even if it was contemplated by the Act to exclude all other claimants except the persons therein enumerated, still, as mentioned above, the Act does not declare that the property is to be divided according to the rules of Mahomedan or any other law, and we should still have to decide by what rules the division was to be guided.

9th. Upon this point Meer Jafur Ali contends (para. 30) that, living with the Nawab up to the hour of his death and known to all the household and dependants as their future masters, his and his wife's titles were at once recognized, and the property passed into their hands as a matter of course; and then in the next para. he declares that the functions of the Agent for the Governor ended with the Nawabship, and that the Agent had no right to interfere with Bukhtyarool-Nissa Begum's possession of the estate, but that all parties claiming shares should have been left to their redress in the Civil Courts, where he and his wife would have appeared in a far better position as defendants than they or rather their representatives now do as claimants, as he would then have shewn that the Nawab was invested with absolute power over his own private estate up to the hour of his death, and that the acts and declarations of his life-time conferred a legal ownership at his death, which could

not be set aside for want of a will, wills being restraints upon the natural and unqualified disposition of property, which the Nawab, owning no superior authority, could at pleasure lawfully exercise, and that the case is precisely the same in principle as if the deceased had been of Dutch or French origin, and never having been in British India, died leaving property in Surat; and he therefore calls upon Government to decide the case on the same principles as had governed their conduct towards the Nawab through life, viz: in conformity with the Nawab's own will and pleasure. He then (para. 39) repudiates the idea that the case is to be decided according to the Mahomedan law merely because the Nawab professed the Mahomedan religion, since prior to the treaty of 1800, the Nawabs were absolute Monarchs and any expression of their intentions as to the devolution of their property would have been positive law to their families whether in accordance with Mahomedan law or not.

10th. The first position assumed by Meer Jafur Alee is rather begging the question, for the mere fact of the Meer and his wife living with her father up to the day of his death and being recognized by the household, would not constitute them his heirs, as the question is not whether the household looked upon them as masters, but whether they are the Nawab's heirs by the law to which the Nawab was subject or chose to subject those under his jurisdiction, and that point still remains at issue. It will not be necessary, until we find to what municipal law the Nawab and his family were subject, to enter into any discussion whether wills are a restraint upon the natural disposition of property as asserted by Meer Jafur Alee, or whether they are not rather a power permitted in some countries and denied in others, by which a man is allowed control over his property even after his death; and as regards the asser-

tion that the functions of the Agent ended with the Nawab's death, and that his (the Nawab's) relations should have been left to their remedy in the Adawlut, it will suffice to remark that freedom from the jurisdiction of our Courts was under Treaty and Regulation (Clause 2nd, Section XXI. Regulation XI., and Clause 2nd, Section I. Regulation XI. A. D. 1827) extended to the Nawab's relations as well as to the Nawab and his servants, and consequently it was an open question and one not decided until the 10th October 1846, (vide Government letter No. 3833 para. 9) whether the Judge could have entertained the suits had they been brought against Meer Jafur Alee and his wife. But as Act XVIII. of 1848, rendered necessary by the Nawab's demise, prescribes by whom the claims are now to be decided, it only remains to be determined by what law the decision is to be guided.

11th. Without any modern precedent for the case of an independant sovereign divested of all territorial possession living with uncontrolled authority over his relations and dependants in a foreign country, we can compare it only with the case of King Edward, who, when returning through France from the Holy land, was allowed, after solemn discussion before the Parliament of Paris, to have jurisdiction even in France over his servant, who, while in Paris, embezzled some silver and was apprehended by the French authorities ; and from which it might be inferred that he would have been allowed jurisdiction over the property as well as lives of his subjects in his train, and that his own property, had he died in France, would have been disposed of according to his own and not the French law :/ or the Nawab might perhaps be held to resemble an Ambassador, who is exempted absolutely from all allegiance and all responsibility to the laws of the country to which he is deputed and in which he resides, being considered even while residing within a foreign state as living in his own

country, retaining his original domicile and his attendants, personal effects and domestic servants being under his protection and equally exempt from foreign jurisdiction: though the immunity allowed to Ambassadors and their suites, is sustained by the interests and courtesy of nations and rendered requisite for negociations and friendly intercourse and therefore rests on a different basis from the immunity granted to a foreign potentate, either travelling through or residing in a foreign country. Let us then without too nicely enquiring into the causes, follow the principles of these cases, and though the Nawab was resident within the British Territories, let us apply to the distribution of his property that law to which he was subject. We know of no rules or Code of laws laid down by him for the government of his household and relations and we must therefore conclude that his own will was the only law that he obeyed, and in disposing then of his property we must strive to ascertain what that will was.

12th. This leads us to consider the grounds of one part of Meer Jafur Alee's or rather his daughters' claim, as laid down in the 4th para. of his answer, that the late Nawab, having two daughters but no male issue, very early contemplated making his future sons-in-law his heirs, and that having once formed this resolution, he retained it to the day of his death.

13th. In support of this position, Meer Jafur Alee relies on a letter (99) addressed by His Excellency to the Honorable the Governor regarding the future disposition of his honors and fortunes, and contends that Meetaram's evidence (37) shews what that disposition was to be;* and,

* "I was sent to Bombay in consequence of the Nawab's having "got two Princes from Delhi in the Palace to marry his daughters. "......... The Nawab sent to inform the Governor that he was anxious "to form a marriage with two Princes of the house of Delhi who were in "the Palace, but Mr. Romer told me to advise him not, as they were of "different rank from him and that the marriage would lead to constant "disputes."

under this impression, that he entered into a treaty with the sons of the King of Delhi, which was broken off on Mr. Romer's advice that he should seek alliance with another family. That on that a treaty was commenced with the Nawab of Baroda, which was however subsequently broken off, but that two letters from the Nawab of Baroda to his agent in the business, Meer Gyossoddeen, (94 and 95) shew that the sons-in-law were intended to be the Nawab's successors and that the arrangement was to be guaranteed by the Bombay Government. When this treaty failed, Meer Surfraz Alee entered into a treaty for his sons and at the Nawab's desire (122) wrote an agreement (97) attested by himself and his sons, that the Nawab should make a will in the name of the two sons regarding the succession and inheritance and that they (the sons) would always conform to the customs of the house of Humdanee. But before the marriage was performed Meer Surfraz Alee obtained a guarantee from the Nawab (19) that he adopted his (Surfraz Alee's) sons and appointed them his successors. The marriages were then performed with the usual pomp and ceremony, the Right Honorable the Governor, the members of Council and others being invited. Meer Jafur Alee also produces a letter from Mr. James Williams, the Political Commissioner in Guzerat, (20) shewing that he promised to use his endeavours to accomplish the Nawab's wishes, and upon these, as establishing the Nawab's intentions and engagement at the time of the marriage, he relies that Government, having no interest or policy to consult, will not interfere with the fulfilment of the contract.

14th. Meer Jafur Alee further contends (para. 21) that he and his brother, in fulfilment of their part of the contract, left their father's family and joined the Nawab's, and that Nujeebool-Nissa Begum, Meer Ukhbur Alee's wife, having died without surviving issue in 1839, and his wife having

given birth to a son, the Nawab in 1841 placed the child on the "Musnud" as his successor, and informed Meer Surfraz Alee (21) of his having done so, with Meer Jafur Alee and Bukhtyarool-Nissa Begum's consent, and that after the child's death the Nawab looked upon Meer Jafur Alee as the sole successor to his title and dignity, and that the evidence (para. 26) furnished by a deed of commendation to Mirza Mahomed Alee Beg (25) dated 11th April 1840 and the oral evidence of witnesses shew that the Nawab never intended to swerve from his contract but died with the full conviction that the private estate at least would pass into his daughter and son-in-law's hands.

15th. The first document to which Meer Jafur Alee refers, the letter to the Honorable the Governor, was of so confidential a nature, that the then Agent who forwarded it on the 22nd March 1830 did not keep a copy of it, nor trust any one to copy his translation; it is however very certain that it was connected with the future disposition of his "honors and fortune": but whatever his intentions were, they were frustrated by the answer sent by Mr. Chief Secretary Norris on the 23rd November following, to the effect that Government were much afraid that it will be contrary to all usage to meet the wishes of the Nawab.

16th. The next two letters (94-95) the former without date, but evidently written before the other which is dated the 31st August 1830, purport to have been written by the Nawab of Baroda, Ameeroodeen Hossen Khan, to Meer Gyassoddeen his brother-in-law, who was then treating for a marriage between Ufzulooddeen Khan's daughters and the sons of the Nawab of Baroda. The marriage was broken off, and the letters, which are partly destroyed, shew rather what the object of the Nawab of Baroda was than the Nawab of Surat's intentions, for though it would appear to refer to the necessity of some guarantee from the

Government of Bombay, it shews that the Nawab of Barodas's object was to get his sons, " the sonship of the Nawab not only the son-in-lawship."

17th. In the latter of the two letters the Nawab of Baroda again appears to refer to a guarantee of his sons' inheritance from Bombay, but though these might shew what was in treaty between the Nawabs, yet the marriage having been broken off and Government not having responded to the Nawab of Surat's wishes, it cannot be argued that his hopes and intentions remained the same after November 1830, when he received the answer from Government, as they were before; so that though the Nawabs of Surat and Baroda might have entertained hopes of obtaining a guarantee from Bombay while they were treating of the marriages, the same hopes need not have been held out to Meer Surfraz Alee, as it was about three years after the refusal was received from Bombay that the treaty was entered upon for the marriage of the Nawab's daughters Nujeebool-Nissa Begum and Bukhtyarool-Nissa Begum to his (Meer Surfraz Alee's) sons, Meer Ukbur Alee and Meer Jafur Alee. Let us see however what the treaties were between the parties. On the 4th December 1833, Meer Ufzulood-deen writes to Surfraz Alee (122) telling him that he takes Ukbur Alee and Jafur Alee as his sons and gives him (Meer Surfraz Alee) his two daughters as his own; he also sends a memorandum (118) by Beychurdass, as a rough draft for Surfraz Alee and his sons to have an agreement drawn out to that effect and sent to the Nawab with their seals and signatures. The agreement (97) so drawn out, signed and sealed was sent to the Nawab with a letter dated 17th December 1833. In this it is among other things covenanted—" And his highness will make a will in " the name of the two sons regarding the succession and " inheritance of the property and maintenance of the sur-

"vivors, the two sons are to act upon the will and they will "always carry the usage and ceremonies of the house of "Hamdanee into execution."

18th. This document has been impeached by the opposite parties, as it was not produced when Sir Robert Arbuthnot was enquiring into the claims of the Nawab's heirs; this omission was the more extraordinary as Zeeaool Huck (105, 6, and 7) who wrote the copy sent by Surfraz Alee, and Mooteeram who wrote the rough draft sent by the Nawab, were with Jafur Alee at the time when Sir Robert Arbuthnot was conducting the enquiry and aiding by their advice the Barrister he employed. It is however a matter of very little moment whether these documents be genuine or not; the discovery of them at this late day in the handwriting of people now alive, who did not mention them when the former enquiry was going on, seems strange; but even admitting them to be genuine, they prove nothing, for though the Nawab Ufzuloddeen may in 1833 have held out hopes to Surfraz Alee, and the latter may have entered into a treaty of marriage with the Nawab on the understanding that he was to make a will leaving the succession and inheritance to his son-in-law, still as the Nawab was guided only by his own will and pleasure, and there is no written will produced on the subject, we must conclude that the Nawab altered his intentions or made some other arrangements and that these arrangements or alterations whatever they were, were agreed to or submitted to by his sons-in-law.

19th. It is however urged that the Nawab's confirmation of his intentions is proved by a letter from him to Surfraz Alee (19) dated 29th March 1834, which he writes apparently with a view to remove some doubts that Surfraz Alee entertained and tells him that he should not imagine "these weddings to be ordinary ones, for I adopt your

" children to be my sons and appoint them my succes-
" sors; after the marriage your sons will be mine, and live
" in my house."

20th. The genuineness of this letter the opposite party dispute, but we shall see hereafter that the most material part of this letter is contradicted by the Nawab's subsequent conduct.

21st. These letters have brought us down to the end of March 1834. On the 19th and 20th of the next month Ukhbur Alee was married to Nujeebool-Nissa Begum and Jafur Alee to Bukhtyarool-Nissa Begum, daughters of His Excellency the Nawab, and on that occasion we are informed by Mohun Lall (100) that about 5 Lacs of rupees were expended, and from the memorandum (104) we find that the marriages were celebrated with all the pomp that could be contributed by salutes and parading of troops. The usual invitations were also sent to the Governor, the Members of Council, and others, and their answers (9 to 14) are filed in the case; but all this only proves that the marriages were conducted in such a style as would be thought befitting the state of his Excellency the Nawab, but does not prove that the Nawab intended to make his sons-in-law his heirs.

22nd. The next document on which Meer Jafur Alee relies is a letter (20) dated 24th June 1834, from Mr. Williams, Commissioner in Guzerat, in which, in answering the Nawab's letter, he says "respecting the appointment of " Syud Ukbur Alee and Syud Jafur Alee as your successors, " by perusing that letter I became very happy; further I " beg to state that I will do my utmost with the authori- " ties in that matter." This letter being written so shortly after the marriage and by a person having no authority of himself to sanction or disallow the adoption, perhaps needs no comment, any more than the next in point of date,

a deed of commendation (25) from the Nawab to his Minister Mirza Mahomed Alee Beg, dated 10th April 1840, which after presenting him with Rupees 10,000 and other matter, goes on to say—" and afterwards the children and " posterity of Mujlee Begum Bukhtyarool-Nissa shall be " bestowing honor and respect on the Meerza"—for this would be equally applicable to Mujlee Begum whether as his daughter merely or as his successor; but the next exhibit (21) a letter dated the 5th February 1841, is worthy of more consideration: it is written by the Nawab to Meer Surfraz Alee informing him that he had placed Meer Jafur Alee's son, " Meer Ameeroodeen, on the musnud, and the " whole of my establishment have made him presents on " the occasion, and according to the custom of my ances- " tors I have given him the Drums &c. and at the desire " of his parents I have appointed him my successor." The authenticity of this letter as well as the other documents is contested by the opposite parties, but there is no reason why they should not have admitted it, so opposed as it is, as Meer Kumroodeen points out, (para. 49) to the terms under which Meer Jafur Alee would contend the marriages were contracted.

23rd. In 1839, Nujeebool-Nissa Begum, Ukbur Alee's wife, died and left no children; so that Bukhtyarool-Nissa Begum, Meer Jafur Alee's wife, was at this time the Nawab's only child. The Nawab had promised (19) to make his sons-in-law his successors; one, the elder, could no longer be so, and the younger had every right to expect that the Nawab would fulfil his intentions towards him, but instead of that, this letter would shew that the Nawab had no intention of making his son-in-law, but his grandson his successor, and that it was his daughter and son-in-law's wish that he should do so.

24th. This, allowing it to be genuine, is the only proof

we have of anything actually done by the Nawab in furtherance of his intention to appoint a successor, and that this was a grave, deliberate act, requires confirmation, as we do not find that the proceeding was ever communicated to the Agent or any public notice whatever taken of it, for Atmaram (26) states that none of the gentry of the city were invited or attended the meeting. The child however died before his grand-father, and of what after that were the Nawab's intentions we have no proof; we have the evidence of witnesses, that he looked upon Meer Jafur Alee as his son, but we also have evidence that the Nawab was entirely in Mahomed Alee Beg and Futeh Mahomed's power, and would not, when on his death-bed, allow Meer Jafur Alee to sit near him.* So that when we find the Nawab made no will and instead of appointing his son-in-law as he promised his successor he at his son-in-law's request, appointed his grandson, and on that grandson's death neither renewed his promises to his son-in-law, nor made the will he promised, we cannot conclude that the Nawab meant that son-in-law for whom a will appeared to be requisite to constitute him heir, to be his heir without one; but the more rational conclusion to arrive at appears to be, that disappointed in heirs male, both of his own and his daughter's, and conscious that his dignity as Nawab must become extinct at his death, he made no will or expression of his desire how his property should descend, but left it to follow that course which the law or ruling authority might prescribe; and this appears the more probable and reasonable since so long as

* "I was in attendance in the Nawab's palace when he was ill and "went and saw him two or three times. I and Jafur Alee were together. "The Nawab would not allow any one but Mirza Mahomed Alee Beg "and Futeh Mahomed and other Khidmutgars to sit near him; he would "not allow Jafur Alee."

the Nawabship and Pension remained there was some one for the whole family to look up to, but when these failed there would be no head to provide for the other members of the family and each must thenceforth depend upon his own exertions.

25th. The position therefore assumed by Meer Jafur Alee, that the Nawab retained to the day of his death his resolution to make his son-in-law his heir, is not proved; nor is it shown what the Nawab's intentions were with regard to his property.

26th. Having thus found that his own will and pleasure, the only law to which the Nawab was subject, have not prescribed any rules for his inheritance, we must next see whether any particular custom of inheritance was preordained in the family—whether as urged by Jafur Alee (para. 46 to 89 and 107) the custom of the family was neither to divide nor to receive inheritance with any relations.

27th. This being a negative position, the onus of proof ofcourse rested on those who asserted the affirmative, and in support of this the opponents to Meer Jafur Alee produced (48) a deed of division, dated 16th November 1762, in which the widow and four daughters of Sufdur Khan divide his personal property; the widow Ushruff Khanum acting for herself and one daughter Koodusia Khanum a minor, the then Nawab's son Fukroodeen acting for his own wife another of the daughters, and the then Bukhshee Meer Nujmoodeen acting for the other two daughters he having married their niece. Out of this property the widow Ushruff Khanum, by a deed dated 30th September 1773, (55) bestowed her share on Koodusia Khanum and her husband, and on the 8th August 1803, Koodusia Khanum by a deed of gift (56) bestowed her own share and what

she received from her mother on her husband Heydur Khan, and of this Meer Heydur's property Atmaram Dewan (26) says* the Nawab may have taken away a third part of the building materials of a house, and the inference is that he took it as his share of the inheritance; as Meer Heydur's son Meer Wullee, with whom the Nawab divided Sufder Khan's real property in 1815, died without issue. The deed dividing the real property (61) is dated 15th October 1815; the property is divided into four and one-eighth shares, and is made over, one share to the Nawab Meer Nasseerood-deen, one share to the Bukhshee Meer Suddroodeen and two and one-eighth shares to Meer Wulleeooddeen the son of Meer Heydur above alluded to. Some of the property which fell to the share of the Nawab consisted of a part of the Garden called Hameedee Baugh, and 12 Beegas and upwards of this, by a deed dated 16th August 1827, (No. 38) the Nawab, declaring that some of it had descended to him from Sufdur Khan and some been purchased by his father the late Nawab, makes over as a gift to Meetaram, who on the 23rd December in the same year bought (39) Meer Mooeenoodeen's share in the same garden which he Meer Mooeenoodeen also inherited from Sufdur Khan.

28th. On this point Meer Jafur Alee contends (para. 67) that the precedent is not applicable to the present case; that in the first place the family of the late Nawab were Syuds and that of Sufdur Khan Moguls, and that Sufdur Khan's successor having usurped the musnud, was under no

* "The accounts were not in my keeping, but by guess I should say "the Nawab Sufdur Khan's property was kept distinct in the accounts "from the Nawab's. Perhaps the Nawab took away a third part of the "building materials of Meer Hydur Khan's Palace as his share of Sufdur Khan's property.

obligation to maintain his widow and four daughters, and that proof of the division of a small part of Sufdur Khan's large property among his widow and children, furnishes no argument in refutation of a different usage in a totally different family.

29th. If only a small portion of Sufdur Khan's property had been divided among his heirs, any one member of the family keeping the bulk of the fortune to himself, the instance certainly could not have been quoted as a proof of his custom of division in that family even. But we find that Rupees 1,59,936, apparently the whole of the personal property, was divided on the 16th November 1762 (48) and that the whole of the real property was divided in 1815, (61) the parties in both cases being different; that certainly must be held to prove the custom in Sufdur Khan's family.

30th. But then the objection of Sufdur Khan's family to another of an entirely different lineage and in which it is contended the custom (para. 80) was not simply to place the whole estate in a single man's hand, but not even to allow the estate to be increased by sharing with others. We have seen above (38) that the late Nawab himself admits having inherited from Sufdur Khan, so that the position, that it was the custom of the family not to increase by sharing with collaterals even of a different tribe, has failed, and though the Nawabs may not since 1815 have taken any shares from others nor allowed others to share with them, this practice of twenty-six years' standing cannot be quoted as proving a family custom established for five generations.

31st. It is further contended by Meer Jafur Alee's opponents that a division more in point took place so late as 1822, for they do not appear to place so much stress

upon the documents proving the division of Sufdur Khan's property as they do upon an agreement dated 5th December 1822 (90) passed between the late Nawab Meer Ufzulooddeen and his mother Zeaool-Nissa Larlee Begum, in which he makes over to her one-eighth of his father's property and one-eighth of his Pension.

32nd. The history of this agreement is, that on the death of the Nawab Meer Nusseeroodeen Khan, his widow Zeaool-Nissa Larlee Begum, or sister in the half blood of the Bukhshee Meer Suddroodeen and apparently a woman of very strong mind who had great influence over her husband, obtained possession of all the property which she had managed during his life-time and refused to give it up. The dispute between the mother and her son was the subject of references both to the Agent and Government, who refused to interfere (88 and 89); but at last the Bukhshee Meer Suddroodeen on his sister's part, and Mirza Abdoolla Beg and Dewan Atmaram on behalf of the Nawab, entered into a settlement bearing date the 5th December 1822, in which it was covenanted that Zeaool-Nissa Larlee Begum should retain all the estate standing in her name together with all the articles connected with her marriage of which she was in possession, that her son should give her an eighth of all jewels, wearing apparels and arms which he had in his possession; of all the effects and landed property of their ancestors and the late Nawab of which she was in possession, she was to make over seven-eighths to her son and retain one herself. Then among several covenants concerning domestic affairs and for payment of the property, it is agreed that she is to receive Rupees 1,250 per mensem "being one-eighth of the allowance granted by the East India Company," and the whole concludes with—

" The above detailed eighth share has been made over in " writing to me by my beloved son, the Nawab, in conse- " quence of his regard for my comfort and pleasure, for " no similar division has ever taken place in our family for " five generations; and hereafter if any of our relations claim " a share of the estate of any person either alive or dead, " his claim is void and uncognizable. After my brother " Meer Sudroodeen Khan Sufdur Jung Bahadoor had " consented to these terms, my beloved son agreed to give " the eighth part to me. Further my brother Meer Sud- " roodeen Khan Sufdur Jung Bahadoor has not and shall " not have any claim upon my beloved son for a share in " any estate of any body dead or alive."—And upon this document and covenant both parties rely as proving their several positions. Meer Jafur Alee quotes it (para. 56) as an instrument solemnly recording the usage of the family and as decisive on the point, while all the opposing parties claim it as proving that the mother of the late Nawab herself got her eighth or widow's share out of the Nawab's estate, and therefore that the custom of dividing is undoubted.

33rd. The document does not however prove either position; it appears to have been passed under peculiar circumstances and for a particular purpose and to bind only three people. The Nawab Meer Ufzulodden, his mother Zeaool-Nissa Larlee Begum, and her brother Meer Sudroodeen; for though Meer Mooeenoodeen rightly contends (para. 34) that his father did not become a party to the deed by the mere fact of his seal being attached to it, still as there is a clause in the deed by which Meer Sudroodeen is compromised and he appears to have been his sister Larlee Begum's agent throughout, it would remain for him

to prove that his seal was not attached in confirmation of that clause of the bond. But still as Meer Mooeenoodeen contends, he is not bound by this act of his father.

34th. The mother and son, Meer Jafur Alee contends, (para 60) had been disputing for a twelvemonth for the possession of the property, which the mother would not give up; but at length the Nawab, as a bribe, offered her an equivalent to a widow's share under the Mahomedan law, which she accepted, and so settled their dispute. But that offer, he urges, was not made without the condition that the Bukhshee and Meer Shumsoddeen should become parties to the transaction and in such a form as would preclude their ever quoting it as a precedent, and (para. 65) that the numerous collateral branches then existing, having claims against the estate of the Nawab (as he had against others) which were not then urged, substantially and verbally confirmed the custom of the family.

35th. There is something certainly remarkable in the Nawab and his mother having agreed to settle their dispute with the share which would have fallen to her right under the Mahomedan law, and this makes it difficult to subscribe to the opinion that the agreement was irrespective of that law; and it appears a more natural inference to draw from the abjuring clause and the agreement generally, either that Meer Sudroodeen had advanced some claim for his own share of the property and that the Nawab would not come to terms with his mother until Meer Sudroodeen had withdrawn his pretensions, or that the Nawab required to be assured that her brother, who might have quoted this as a precedent, would not likewise prosecute any claims he might have to a share in the property. That the deed was intended only to affect the then pending dispute, and that it con-

tained assertions opposed to what was the fact as regarded the custom of inheritance in one branch at least of the Alee Humdanee family (the Bukhshee's), is shown from (57, 58 and 59) deeds of release and gift dated in 1804-5 and 8, connected with property belonging to the Bukhshee's side of the family, and these clearly shew that divisions, though the Nawab had not been one of the parceners, had taken place in the Bukhshee's branch of the family within five generations, and as the Bukhshee and Nawab are of the same family, Alee Humdanee, what would apply to one branch would naturally apply to the other, unless some peculiarity was proved. The inference then is that the consent of the Bukhshee was required only to prevent his urging any claim at that particular time and quoting this deed as a precedent. The expression in the deed that no division had taken place in the family for five generations, too, is not very intelligible, as the late Nawab was only fourth in descent from Syud Zanoodeen alias Shah Muckhan, whose sons Mooeenoodeen alias Syud Uchun and Zeealooddeen alias Syud Nathun founded the families, the former of the Syud Nawabs and the latter of the Bukhshee. Moreover as we have seen above, the Nawab's own father in 1815 took a share in property with the Bukhshee, so that except in its strictly literal sense that "no similar division had ever taken place" the assertion certainly is not true; and if the deed is to be confined to its strictly literal meaning, it does not apply to the present case, for here no mother is claiming a share from her son, and the division now sought is in no way similar to that made by the late Nawab in 1822.

36th. We have seen that it is the custom of one branch of the family (the Bukhshee's) to divide their property.

and that the late Nawab's father has on one occasion with the Bukhshee's family taken his share of the other property, and that so lately as in the year 1815; it is then clear the custom of the family did not, as is asserted, preclude the estate being increased by shares from collateral branches, and if the shares were not more often claimed and formally made over or if the Nawabs never divided the property they received from their fathers with others, except on one occasion, we must look upon it as a circumstance peculiar to the Nawabs alone and not as a custom binding upon the whole family of Alee Humdanee.

37th. The very situation of the Nawabs might of itself induce to the practice of not dividing the property. The Nawabs for the last five generations were almost independent, and both the last Nawabs were, as we have seen before, entirely so and subject to no rule but their own will. It is then not only probable, but natural, that, on succeeding to the musnud, they should take possession of all the property left by the last Nawab, and leaving all their collateral relations in possession of whatever property they had of their own, and by supporting all those not possessed of property, or providing for their advancement in life, they should, by a tacit consent on the part of the several members of the family, have been left in possession of the whole estate and have avoided all division of the property.

38th. It is therefore unnecessary to speculate on what may have been the agreement the Nawab required Meer Mooeenoodeen to sign or why the treaty for marriage between him and Shazadee Begum was broken off. For though Meer Jafur Alee (para. 81) claims it as supporting his position and that it must have had reference to some other claim that Meer Mooeenoodeen might probably assert con-

sequently upon his intended marriage and that it could not bear reference to the succession, or if it did that it must have been a mere matter of precaution to remove a possible obstruction and not a deed withdrawing pretensions which had previously been extinguished. The whole is mere conjecture, and, the custom of the family not being established, there was no occasion for Meer Mooeenoodeen's adducing the subject in proof at all.

39th. Having thus seen that there were no municipal laws to which the Nawabs were subject nor any peculiar custom existing in their family, it remains to be seen to what law the distribution of the property among the Nawab's family is to be subjected. The general rule is that personal property should be distributed according to the law of the domicile, while to the inheritance of real property the *lex loci* is alone applicable. The law of the domicile (of the Nawab's Palace) we have seen does not exist except in the Nawab's pleasure alone, and what his pleasure was in this case, he has not recorded even in the most informal manner. The real property then, we may safely say, would follow the law of the land, for though we might, had any laws of the Nawab's Palace been forthcoming, have raised the question whether the *lex loci* was to be strictly applied to the real property, still no such laws existing, there is no ground for raising any question at all. That property then must be divided according to the Mahomedan law, and as we can find no other law or rule applicable to the personal property, there does not appear any reason why that also should not follow the same law—the religious law of the deceased.

40th. It was sought on the examination of Moonshee Lootfolla Khan (96) to prove that the late Nawab could

not be held to be a Mussulman. * His conduct has been shewn to have been in many points and on some occasions contrary to the strict rules of that faith, and it is therefore contended that the Mahomedan law is not applicable to the case of his inheritance. The Nawab was a Syud and Meer Jafur Alee married into his family as such ; he was buried as a Mussulman ; and in subjecting men to the laws of their faith it is not necessary to inquire whether they are observers of the strictest rules of it or merely nominal conformers with it; the rule is the same for the one as for the other. If any other mode of disposing of the property except by Mahomedan law was pointed out, the fact of the Nawab being but a heterodox Mahomedan might have same weight, but in the absence of all semblances of other laws or customs to guide the distribution of the property, and with the law of the land in which the real property is situated indicating the Mahomedan law as the rule to which that portion of the inheritance should be subjected, we are constrained to adopt that as the law which should govern the personal property also and might safely have adopted it even if the Nawab Nusseeroddeen Khan had not been shewn above to have taken a share in the property of Sufdur Khan and his nephew Meer Hyder by right of the Mahomedan law of inheritance.

41st. Having thus determined by what law the claims

" * To all appearance the Nawab was not a Mussulman. I never saw " him at prayers. I never saw a beard on his face. I have heard " him abusive on religious subjects. But I do not know what he might " have been in his heart. The Nawab, when attending prayers at the " Eed, never bowed himself to the ground, and used to talk while they " were at prayers. I have heard that the Nawab was called a Syud." —*Lootfolla Khan's Evidence.*

of the several parties are to be tried, we may now proceed to examine the claims themselves.

42nd. The first claim put forward is by the heirs of Mirza Mahomed Beg and his sister Ameena, claiming their shares as the heirs of Fukrool-Nissa Begum wife of the late Nawab's grandfather Hafizoddeen, in the property which descended to the late Nawab Ufzuloddeen from his grandfather.

43rd. In support of this the Petitioners offered to file the Sunnud of Fukrool-Nissa's dowry, the amount of which they claimed; but as that would found a claim of debt again the estate and not a claim of heirship, it was refused, and all that remains for decision is, whether the Petitioners have any right to share in the property left by Ufzuloddeen. Their assertion, that the property had never been divided, is met by the opposite parties (with the exception of Meer Jafur Alee) with an assertion that Ufzuloddeen himself divived the property with his mother and that they should then have urged their claim; and there can be no doubt, whether the agreement between Zeaool-Nissa Larlee Begum and her son be looked upon as a division of the property according to Mahomedan law or a mere private arrangemeut between the parties, that that was the time, if no earlier time occurred to them, when any persons claiming a share in Hafizoddeen's property should have come forward. The Agent has no power now to enquire into the Petitioners' claim for their ancestor's dowry, and, therefore, that much of their claim is thrown out; but the question may still remain whether their descent entitles them to a share in the property of the late Nawab, and that depends upon the rules of Mahomedan law, to which the point must be referred.

44th. The second claim is by the late Nawab's grand-daughter Zeaool-Nissa and Raheemoon-Nissa Begums, who by their father Meer Jafur Alee Khan Bahadoor claim the whole property. That they are not entitled to the whole property has already been decided. It remains to be seen whether they are entitled to any share in it. The objection urged to their claim is, that their grandmother, Ameerool-Nissa Begum, being a concubine of the late Nawab, their mother was not legitimate and they consequently are not entitled to any share in the property.

45th. It appears from entries in the Quazee's books (22) that on the 10th September 1825, the late Nawab Meer Ufzuloddeen married two wives, one named Wuzeer-ool-Nissa, an emancipated slave, and the other Zeeahool-Nissa, of whom nothing is mentioned. This Wuzeerool-Nissa is said by the witnesses Hafiz Ahmud, (28) Golam Ahmud alias Khoob Meea, (29) Arush Begum, (108 and 111) and Ameerool-Nissa Begum herself, to have been Ameerool-Nissa Begum, who they declare was a Rajpoot girl brought from Bhownuggur, her name being Umrulba ; that she was purchased by the late Nawab of the man who brought her from Bhownuggur when about 12 or 13 years of age, and called by the then Nawab and his wife Munmanee ; that when pregnant of Bukhtyarool-Nissa Begum (she says, the others give a later date) she was called Wuzeerool-Nissa in which name she was married to the Nawab after Bukhtyarool-Nissa's Bismilla, which takes place when a child is four years four months and four days old, and that shortly after her marriage she was called Ameerool-Nissa. On the other side witnesses are produced, and, among others, the person into whose charge Ameerool-Nissa Begum in 1842 (116) told the

Agent she was given when first received from Bhownugger, Booa Rung Bahr, (46 and 47) who say that she was not a purchased slave, that she had run away from her husband and sought shelter in the Palace, and that she was never known by any names but Munmanee and Ameerool-Nissa and consequently that the marriage of Wuzeerool-Nissa with the Nawab could not refer to her. They also cite the Nawab of Baroda, whose treaty of marriage between his brothers and the Nawab's daughters we have noticed above, to prove that it was in consequence of the tainted birth of the Nawab of Surat's daughters that the marriage was broken off.

46th. The whole of the evidence on this point is most unsatisfactory; though lists of the slaves were kept, none are forthcoming, so that it is impossible to ascertain now, twenty-seven years after the marriage took place, whether Wuzeerool-Nissa was the same as Munmanee and Ameerool-Nissa or whether she was some other person. Ameerool-Nissa Begum, although in 1842 she stated (27) that she had received a note of emancipation from the Nawab at her marriage, now (116) states that as she was not leaving the palace there was no occasion for her to have one, and one of the witnesses she mentioned as being cognizant of her having been purchased, Booa Rung Bahr, (46) positively declares she was not so. The necessity for proving the purchase, marriage and emancipation, is, that according to the strict rules of Mahomedan law (I quote from Macnaghten's principles and precedents referred to by all parties in the case,) the child of a man's slave-girl is his own child if he claim the parentage, and inherits equally with others, (page 61, para. 32, and case IV. page 85) while the children by a concubine are illegitimate and do not inherit (case XII.

page 90). The marriage however with a slave being useless and inoperative, and further (page 260) null and void, it is necessary to emancipate the slave before contracting marriage with her. And marriage with slaves, too, is recommended as a matter of caution, the more so because those persons who are strictly speaking slaves, one captured in an infidel country or descended from such captive, (page 259) are very scarce, and the father might thus find his offspring illegitimate because their mother was not a legal slave (case XI. page 259). But by proving that Ameerool-Nissa had been a slave, her daughter Bukhtyarool-Nissa would become legitimate, and by her emancipation and subsequent marriage to the Nawab, Ameerool-Nissa at his death would become his widow; hence arises the necessity of proving, first, that she was a slave, and then, that she was emancipated and married.

47th. But Meer Jafur Alee, in para. 136, scouts the idea that his mother-in-law's marriage and her daughter's legitimacy should be curiously examined into, claiming, as the Nawab's hopes and affections were centred in him and his wife, that their children should be left in quiet possession of the private estate, and contends throughout (and particularly in para. 42 so it must be admitted) that whatever the Nawab clearly recognized and declared, must be considered legal to the fullest extent within his Palace, though it might not be strictly legal according to the rules of Mahomedan law. It has already been decided that the Nawab's Palace constituted an Empire of itself, and that His Excellency's will, when declared, was to be obeyed as law, and that from that law there was no appeal nor was it subject to the control of any other potentate. It therefore does not appear to be necessary to make any laboured

enquiry into or consideration of the evidence of the marriage or legitimacy, but we must hold those to be legitimate whom the late Nawab always considered and looked upon in that light.

48th. The evidence in the case certainly does not prove Ameerool-Nissa to have been the Nawab's wife according to the rules of Mahomedan law, and Meer Jafur Alee (para. 106) appears to admit as much; and therefore her daughter and grand-daughters would be entitled to no share in the estate; but as it is most certain from evidence in this case that the Nawab, to the day of his death, looked upon Ameerool-Nissa Begum and always treated her as his legal wife, and her daughter Bukhtyarool-Nissa Begum and so long as she lived Nujeebool-Nissa his daughter by Boah Soortee as his legitimate children, and married them with all the pomp and circumstance to which his daughter the most undoubtedly legitimate could be entitled; it is then most certain that his marriage with Ameerool-Nissa Begum must be held to be a legal marriage to all intents and purposes, and her daughter Buktyarool-Nissa Begum, whether born of a slave or a concubine, as much his legitimate daughter as if all the forms and rules of Mahomedan law had been most strictly observed, or as if they had been made legitimate by Act of Parliament; and under this view of the case Bukhtyarool Nissa-Begum's daughters must be held entitled to a share in the property as the representatives of their mother, the only child who survived the Nawab.

49th. The next claim is urged by Ameerool-Nissa Begum (herself) to a share as widow of the late Nawab, provided her grand-daughters are not entitled to the whole property. This claim is contested on the ground that

Ameerool-Nissa Begum was not the Nawab's legal wife, but as it has been decided above that having been recognised by the Nawab as his lawful wife it is not competent now to question the point, and the Nawab having left no directions as to the apportionment of his Estate, Ameerool-Nissa Begum must be held entitled to all that the Mahomedan law would grant to a widow, who had been married according to the strictest rules of the religion.

50th. The fourth claim is that of Meer Surfoodeen alias Bahdoor Shah Vullud Fazul Hossein, who claims to be one of the heirs to the Nawab's Estate as son of Fuzloodeen Hossein by his wife Janee Begum daughter of Mudina Begum daughter of Meer Mooeenoodeen alias Syud Uchun and consequently sister of the late Nawab's grand-father Meer Hafizoodeen. The petitioner's descent is not questioned ; the only points at issue in this case are, whether the Nawab Ufzulooddeen's property is to be divided, and if so and according to the Mahomedan law, whether Meer Sufroodeen is entitled to any share in it.

51st. It having already been decided that the property is to be divided and according to the Mahomedan law, the Petitioner will take only that which the law allows him, and what that is the Quazee can alone decide.

52nd. The fifth claim is that urged by Padshah Begum for her share as widow of the late Nawab Ufzuloodeen. The only opponent to this claim is Meer Jafur Ali on the part of his daughters and their grand-mother, who urged that the Nawab had some time before his death been divorced from her, and consequently that she was not entitled to any share.

53rd. He subsequently offered (10) to admit that Padshah Begum was not divorced if she would acknowledge

that for many years after her marriage she had lived separate from the late Nawab; that he was not reconciled to her during his life-time and did not even see her when on his death-bed; that he allowed her Rs. 30 per mensem and her food only; that after the separation she never was admitted into the Palace, not even on the occasion of festivals or rejoicings in which the other ladies of the family took part.

54th. This however Padshah Begum would not accept and the proof therefore remained with her to shew that the whole or any part of the above was incorrect and that she was on a more familiar footing with His Excellency and the Ladies of the family, while Jafur Alee produced evidence to shew that a positive divorce had taken place.

55th. Meerza Mahomed Alee Beg (12) deposes to the Nawab's having been very angry one day, about five months after his mother's death, when he heard Padshah Begum (from whom he was separated) talking as if she was scolding, and to his having asked him and Abdoola Beg why she was kept there, as he had divorced her? and he desired them to send her away; this order, on Abdoola Beg's beseeching him, he recalled, and then Abdoola Beg had her removed into another part of the premises. These facts however he never mentioned to Mr Elliot or Sir Robert Arbuthnot who were making enquiries into the case, though he says he did to Mr. Andrews who was not making any enquiry, nor, though he says rich men do maintain their divorced wives, can he mention any instance of such being the case. Dowlut Ufza (18 and 21) gives a similar account of the Nawab's anger at Padshah Begum's making a noise in the Palace and what then occurred, except that the Nawab said "I must divorce her!" and Arush Begum alias Jeegree Begum (19 and 30) deposes to the Nawab having been very angry with her once for asking him to allow

Padshah Begum to visit her and asked whether she did not know that he had divorced her; but none of these nor do any other witnesses depose to having heard the divorce pronounced, nor is there proof of a solemn divorce ever having taken place. Nor again are we able to find grounds for it. None of the witnesses cast any imputation on Padshah Begum's character. Padshah Begum herself declares that she separated from the Nawab because he sent the Khidmutgur (men servants) to call her. Doulut Ufza says that it was because Padshah Begum broke her bangles and took off her nose-rings (as it were went into widow's weeds) at her father-in-law's death, which displeased his son her husband Meer Ufzalooddeen, while Arush Begum says that the Eunuchs were the cause of the quarrel. On this Meer Jafur Ali only contends (para. 116) that it is more probable that she was divorced and maintained by the Nawab for the sake of his character and family, than that she remained his wife during so protracted and rigid an abstinence. But no positive divorce is proved, nor are any grounds shewn for it; though, on the other hand, it is proved, that except on one or two very doubtful occasions, the Nawab, from about the time of his mother's death down to the time of his own, never went to visit Padshah Begum.

56th. There is no doubt however but that he made her an allowance, and it is proved that from 1832 down to 1842, her name appears in all accounts as "Mehle Bundeganee Ali Broach" (The Broach family of the slave of Goa) and that in 1831 a passport for her to go to Broach was obtained under the same designation, and that her brothers too, up to March 1830, were in the receipt of allowances from the Nawab. Meer Jafur Ali contends (para 122) that the accounts and passports prove nothing, as the former were not dictated by the Nawab and the latter does not prove

that Padshah Begum went to Broach with the retinue* mentioned in her passport. The documents certainly cannot be taken as positive proof either on one side or the other, but the whole tells against the probability of the Nawab's intention ever having been to divorce Padshah Begum, and her return to Surat from Broach after having gone there, whether with a small or large retinue, instead of staying with her own family, may be looked upon as conclusive against the divorce. The witnesses have been unable to instance a similar divorce within their knowledge, so that the practice is opposed to a divorced woman being maintained by her husband, and as the law does not hold her entitled to maintenance except for a short time (Edut) we can find neither law nor practice to support the position that Padshah Begum had been divorced and must therefore conclude against it.

57th. Had Padshah Begum however been divorced, she would have been entitled to have demanded her dower, and that, if there are no other social causes, may be one reason why divorces are less frequent here than in Persia and Arabia, (as mentioned by Jafur Alee in para. 112) and might have restrained the Nawab from divorcing Padshah Begum: but as, for the reasons given above, (in the 47th para,) I would not hold the Nawab to the strict letter of Mahomedan Law in questions of marriages or inheritance, no more would I do so in a question of divorce if it could be clearly shewn what his intention was; still where his intentions are not manifest, or even where a doubt remained, it would be most harsh towards the widow, to declare, that though the Nawab had maintained her for sixteen years, yet that twenty-six years ago he had divorced her, and she ought then to have left his house with her

* A Palanquin, 6 Carts, 7 Troopers, and 25 armed Peons.

dower, and have betaken herself to her own family; that having allowed him to maintain her, gave her no title to any provision after his death, for not having been his wife her maintenance died with him. It certainly is more probable to conclude that the Nawab always intended what he certainly tacitly allowed for many years though he might not openly have declared it, that Padshah Begum was his wife, separated, but not divorced from him.

58th. If this view of the case is adopted, Meer Jafur Alee contends (para. 128) that all Padshah Begum had a right to expect from the Nawab's heirs was a maintenance such as she received during the Nawab's life-time. That Government have given her a larger share of the Pension than even as widow she would have been entitled to, and that she has therefore no legal or equitable claim to a share of the Nawab's Estate.

59th. It has been shewn above that what prevailed during the Nawab's life-time cannot be held as a rule after his death when the Nawabship and Pension ceased, and though he and Padshah Begum might have been satisfied by her receiving only a pittance every month yet it does not necessarily follow that he should have meant his heirs only to continue that pittance to her, and as nothing has been left on record to shew what the Nawab's intentions were as regarded Padshah Begum after his death, it is certainly more safe and fair to all parties to decide this and all other claims in conformity with the Mahomedan Law, and consequently, that Padshah Begum being one of the Nawab's widows, must be entitled to her portion of a widow's share in his property and not a mere Pension only.

60th. The next claim urged, is by Meer Mooeenoodeen commonly called the Bukhshee, who claims as next of kin to Meer Ufzuloodeen, being great-grandson of Syud Janoodeen to whom the late Nawab stood in the same relationship.

61st. The only objection urged to this claim is by Meer Jafer Alee (para. 90) to the effect that the claim can only hold under a strict application of the Mahomedan Law, and that under that, Meer Mooeenoodeen is illegitimate, as his father Meer Suddroodeen was never married to Goolrung the clamaint's mother, and she was not his slave. To refute this, the Bukhshee files a deed of rule, dated 20th May 1803, by which one of his father's Eunuchs, Busunt, purchased a slave girl named Moheenee, and calls Boon Chitta and Boon Anzeezbanoo, who depose to Busunt having given the girl to the late Bukhshee Meer Suddroodeen, who cohabited with her about a year or so after his father's death (A. D. 1815). If these witnesses are not wrong in the time they fix as that at which Meer Suddroodeen first cohabited with Goolrung, they would make the claimant a much younger man than he is, but as Moheenee was eight years old when she was bought in 1803, she must have been twenty when Meer Nujmoodeen died, and twenty-one when first Meer Sudroodeen cohabited with her, which is older than usual and would make Meer Mooeenoodeen, the present claimant, to be a man of not more than thirty-six years of age instead of some six years older which he probably is and well might be even if his mother was born in 1795. Meer Mooeenoodeen also files a letter from the Governor of Bombay, dated 14th February 1827, in which he condoles with him on his father's death and desires him to maintain the Musnud of his ancestors with honor and respect, and this he claims as proving his legitimacy. Against this Meer Jafur Alee in (para. 89) contends that, however much Meer Mooeenoodeen may have been acknowledged by Government or the Nawab as the legitimate member of their family, if they were not so according to strict rules of Mahomedan Law, they would not be entitled to inherit; though he further contends that the strict rules

of Mahomedan Law are not to be applied to the case of his mother-in-law and wife. The two positions are not easily reconciled, for if the Mahomedan Law is to have any effect in the Nawab's palace, it is difficult to imagine why the Nawab's will and pleasure was alone to be consulted as to who was to be considered his wife, while his recognition of more distant relations was to be rejected unless it would stand the test of the strictest rules of evidence.

62nd. Meer Jafur Alee however has offered no evidence to refute this claim or to shew that the late Nawab, ever during his life-time, threw any doubts upon Meer Mooeenoodeen's legitimacy, but would have it inferred (9) from Meer Mooeenoodeen's having objected when called upon by Sir R. Arbuthnot to give-in his maternal descent (on the ground that succession being derived through the father alone the mother's descent was immaterial), that he knew his mother was not a lawful wife, and therefore avoided the disclosure. Meer Jafur Alee further contends that the evidence produced by Meer Mooeenoodeen does not prove that Moheenee was his father's slave, but proves her the Eunuch Busunt's, and therefore that Meer Mooeenoodeen by Mahomedan Law became a slave of Busunt's. To this Meer Mooeenoodeen replies (para. 3) that Busunt being his father's slave he could hold no property and that all he possessed was Meer Suddroodeen's, so that if Busunt had not purchased Moheenee for his father, still, being Busunt's slave, she was as much his father's slave as if he had. It is very certain, being admitted by the opponent Meer Jafur Alee, that the Nawab had no partiality for Meer Mooeenoodeen, in fact hardly tolerated his presence, and it is not therefore probable, had he chosen to consider him illegitimate, that he would have refrained from raising the question; but Meer Mooeenoodeen having on all hands been admitted to be Meer Sudroodeen's son and being one of those who did at times

claim the Nawab's protection under the treaty of 1800 and being always entitled to it, this case ought (even if the claimant's birth was more doubtful than it appears to me) to be guided by the rule laid down in the 47th para., and as the Nawab has acknowledged Meer Mooeenoodeen as his father's heir, he must have all the advantages that recognition will give him and receive out of the property of Meer Ufzuloddeen whatever the recognition of his legitimacy by the Nawab and the Mahomedan law will award him.

63rd. The last claim is that of Meer Kumroodeen, who advances a precisely similar claim to Meer Mooeenoodeen.

64th. The objection urged to this is also very similar to the last, it being contended by Meer Jafur Ali (para 95) that Meer Kumroodeen's father Meer Shumsoddeen, was not the legitimate son of his father Meer Kumroodeen, but born of a concubine named Fuzloo, and that nothing is more firmly established in our Courts than that none are legitimate children except those begotten on the wife or legal slave, that is, the descendant of a captive in an infidel country if not the captive herself.

65th. The evidence produced by Meer Kumroodeen is the evidence of two old Ladies, named Rehmuthool-Nissa Begum and Mumdee Khamum, who depose to having heard from Mudma Begum the elder Kumroodeen's wife and from Neeazbanoo the mother of Shumsoddeen, that Kumroodeen, having no children by Mudina Begum, was contemplating another marriage, when his wife, to avoid that, gave him Fuzloo alias Neeazbanoo, a slave she had brought from her father Meeah Uchun as a part of her dowry. This would prove that Meer Shumsoddeen is legitimate and that the opposite party have brought no evidence with which to refute it, and the legitimacy having been acknowledged by the Nawabs for two generations,

it appears to me that independant of the principle laid down that the Nawab was competent to declare who were legitimate and who not among those subject to his control, the fact that he had allowed the legitimacy so long would alone suffice to establish it beyond question. Meer Kumroodeen must therefore be entitled to the share of the property the Mahomedan law of inheritance will allow him.

66th. From the above it appears that it is not proved that there was any custom in the family to which the late Nawab belonged by which his children are entitled to the whole property, nor is it proved that it was the intention of the late Nawab to constitute any particular person his heir to the exclusion of those who would be heirs under the rules of the Mahomedan law of inheritance. It further appears that the late Nawab Meer Ufzuloddeen left the following relations claimants for his property :—

Two widows, Padshah Begum and Ameerool-Nissa Begum ; one daughter, Bukhtyarool-nissa Begum, since deceased and represented by her daughters Ruheemool-nissa Begum and Zeeaool-nissa Begum.

The following relations of his grand-father's wife :

Meerza Abdool Rehman, her brother's son.

Dossee Khanum, her brother's grand-daughter (son's daughter.)

Khaja Usmutoola, her sister's grandson (son's son.)

Omeah Begum, her sister's grandson's (son's son's) widow.

And Kumroddeen, her son.

Meer Bahadoorshah alias Meer Surfoodeen, the late Nawab's grandfather's grandson (sister's son).

And Meer Mooeenoodeen and Meer Kumroodeen, great-grandsons of the deceased's great-grandfather's brother, descended in the male line.

From a reference to the Mahomedan Law Officer of the Court, (125) it appears that, of these claimants, the widows, child, and great-grandfather's brother's great-grandsons are alone considered heirs and entitled to inherit according to the Mahomedan law, and that they are entitled to share in the following proportions.

The daughter is entitled to one-half of the property.

The widows are entitled to one-eighth between them and the residue will go to the other two heirs in equal proportions.

It is therefore decreed that the property be divided into sixteen shares; and of that, eight shares are awarded to Meer Jafur Ali Khan on behalf of his daughters, one share is awarded to Padshah Begum, one share to Ameerool-nissa Begum, and three shares each to Meer Mooeenoodeen Khan and Meer Kumroodeen Khan; and the claims of all the others are thrown out.

(Signed) W. E. FRERE,
A. G.

SURAT:
Office of Agent for the Rt. Hon. the Governor,
21*st December* 1852.

(True Copy.)

(Signed) W. E. FRERE,
A. G.

Appeal to Government against the Judgment of Mr. W. E. Frere.

To

A. MALET, Esq.,

Chief Secretary to Government,

Bombay.

SIR,

Under the permission accorded to me in your letter of the 23rd November, No. 5148, of 1852, I have now the honor to submit, for the consideration of the Right Hon'ble the Governor in Council, the following appeal from and respectful protest against the recommendation submitted to Government by W. E. Frere, Esq., the Agent for the Right Hon'ble the Governor, for the division of the Private Estate of His Excellency the late Nawab of Surat.

2. The claim I preferred before the Agent on behalf of my two daughters (for I have waived all personal claims in their favor) and which I now carry up to Government, rests on the strongest possible grounds.

3. My wife Bukhtyarool-Nissa Begum (their mother) was the only surviving issue of His Excellency the Nawab of Surat, for whom it was not denied he entertained the greatest affection up to the hour of his death; and by the law of nature prevailing throughout the world, the child succeeds to the inheritance of the parent.

4. Under the Mahomedan code as held by the "Soonees," a share, where the child is a female, is given to collateral relations; but it is admitted by the Agent, in this case, that His Excellency was not subject to or bound to follow the Mahomedan law.

5. On the contrary, Mr. Frere, in his 11th para., after mentioning some examples which might illustrate the legal position of the Nawab, concludes as follows:—"Let us, "without too nicely enquiring into the causes, follow the "principles of these cases, and though the Nawab was "resident within the British Territories, let us apply to the "distribution of his property that law to which he was "subject. We know of no rules or code of laws laid down "by him for the government of his household and relations, "and we must therefore conclude that his own will was the "only law that he obeyed, and in disposing then of his "property we must strive to ascertain what that will was."

6. It not being contended by any party before Mr. Frere that the Nawab had left any testamentary document, the enquiry the Agent proposed to himself in the above para. was, what were the wishes and intentions of the deceased with regard to the devolution of his property at his death? as indicated by other acts than a solemn testament.

7. This then being the point to be enquired into, it might have been supposed that the Agent, like any other judicial authority, would have directed himself to ascertain how far my allegations as to the intentions of the Nawab and which I so strongly relied on as supporting my case, were admitted or denied by my opponents, and to what extent proof was needed from me of the facts, if there were no such denials. But so far from doing this, the Agent has thrown aside entirely the circumstance that my opponents have really not denied that the Nawab's inten-

tions were always in favor of myself and his own issue, and he has criticized the evidence adduced in support of this part of my case, not as a Judge holding the scales evenly between the parties, but with all the spirit of an advocate employed against me.

8. My opponents, of course, will be too glad to avail themselves of any thing thrown out in their favor by the Agent, but whatever they may *now* say in their appeals to Government, I broadly assert that the Nawab's intentions were not really a matter in dispute whilst the enquiry was going on before Mr. Frere. And the Agent has passed over without comment or denial the 25th para. of the written observations I submitted to him in this case, on the 4th May 1852, and which is as follows :—

Para. 25. " My son Ameeroddeen Khan having shortly afterwards " died, the Nawab from that time forth regarded me in virtue of my " alliance with his only surviving child as the sole successor to his " title and dignity, and the fact was well known throughout the house- " hold and throughout the city. Indeed, it has not been disputed " in the course of the present enquiry. On the contrary, the brother " of Padshah Begum openly stated it before you in the presence of " all the claimants and no one contradicted him."

9. Mr Frere does not in any part of his report impugn the correctness of the above statement, still he has treated the existence of the Nawab's intentions as the main point in contest before him. Whereas the case set up and relied on by my opponents was, that the Nawab's intentions were of no importance ; that Government had refused to allow him to appoint a successor, and that, being a Mahomedan, his estate must be divided according to the Mahomedan Law ; and that my deceased wife being, as they alleged, illegitimate, was not entitled to a share under that law.

10. In confirmation of my assertion of the above, I beg to refer you to the written observations handed in by

Meer Mooeenoddeen, by Meer Kumrodeen and by Padshah Begum, to the Agent, on the 4th of May 1852, in no part of which, will you find it denied that the Nawab always intended my wife and myself to be his heirs.

11. The Agent has however disposed of my claim, founded on the Nawab's intentions and positive contract with my father and myself, in the following manner (paras. 25 and 26).

25th. "The position therefore assumed by Meer Jafur Alee, that "the Nawab retained to the day of his death his resolution to make "his son-in-law his heir, is not proved; nor is it shewn what the "Nawab's intentions were with regard to his property."

26th. "Having thus found that his own will and pleasure, the "only law to which the Nawab was subject, have not prescribed "any rules for his inheritance, we must next see" etc.

12. This decision compels me to examine at some length the evidence before the Agent in proof of the Nawab's intentions; but as preliminary to doing so, I request permission to advert to another part of the report, in order to illustrate the spirit in which the Agent has dealt with this case and the forced and unfair reasoning employed by him in arguing it.

13. Government are aware that apart from the Nawab's intentions in favor of my wife and myself, I place my claim on a positive marriage contract made between the Nawab and my father on the occasion of my union with Bukhtyarool-Nissa Begum, by which, after mentioning the Dowry of each lady, it was provided that my brother and myself were always to remain with our wives at Surat with the Nawab, that we were not to marry any rivals to these ladies, and that His Excellency should constitute us by Will his heirs and successors.

14. Mr. Frere mentions (see para. 18th) that this document (the contract) has been impeached by the opposite parties, and then adds—"It is a matter of very

" little moment whether these documents (the original " draft and the sealed agreement) be genuine or not. " The discovery of them at this late day, in the handwrit- " ing of people now alive who did not mention them when " the former enquiry was going on, seems strange, but even " admitting them to be genuine, *they prove nothing* (!) for " though the Nawab Ufzuloddeen may in 1833 *have held* " *out hopes* (!) to Surfaraz Alee, and the latter may have " entered into a treaty of marriage with the Nawab on the " understanding that he was to make a will leaving the " succession and inheritance to his sons-in-law, still as " the Nawab was guided only by his own will and pleasure " and there is no written will produced on the subject, " *we must conclude that the Nawab altered his intentions* (!) " or made some *other arrangements*, and that these arrange- " ments and alterations whatever they were, were agreed " or submitted to by his sons-in-law."

15. Why should this be concluded? It is not in harmony with any one fact in the case. It is opposed to positive evidence and is neither a legal, a natural, nor a moral presumption.

16. The Nawab, as has been proved, died suddenly of cholera; and as he left no will, the Agent draws the inference from that fact alone that the Nawab had broken his deliberate contract, and that my father, my brother and myself had acquiesced in this breach of faith.

17. Leaving out of consideration, for the present, the clear proofs of the genuineness of that contract, let us assume with the Agent that as the Nawab left no will " we must conclude that he altered his intention." Still are Government so fettered in the distribution of this estate that they are not to regard the principles of equity and good faith? Are they not to take into consideration the moral and legal obligations which the Nawab voluntarily

came under or was otherwise subject to? Are all his promises, his contracts, his engagements, to be disregarded because he has not left written evidence of his intention to fulfil them?

18. The legal position of the Nawab, as contended for by me, and indeed as acknowledged by the Agent in his report, is unquestionable, viz: that being the master of his own wealth and family, and owning no superior, his own wishes as to the devolution of his property at his death, however informally expressed, would be a law to his family; but the British Government, though admitting this, are not called upon, in distributing his estate under Act XVIII. of 1848, to regard his wishes as superior to the preservation of good faith, to respect them in opposition to sound morals, or give them effect in denial of the just claims of his own issue, if (as might have happened) he had wished to leave his issue destitute and give over all his property to some favorite. But looking at the parties before Government, their connection with the Nawab and the circumstances affecting each—who has so strong a claim to the attention of Government as the person who demands the fulfilment of a marriage contract in favor of the Nawab's own issue, and which not a single fact shews, not a single witness asserts, which not even the parties themselves allege the Nawab ever intended to abandon or ever did abandon.

19. The argument therefore of the Agent, that the Nawab's positive contract with my father must yield to the *presumed* change in the Nawab's intentions, is so perverted in reasoning and so inequitable in morals, that Government, I feel confident, would never adopt it, had that change been proved instead of being, as it is, simply and groundlessly assumed.

20. I now beg respectfully to draw the attention of

Government to the details of proof I laid before the Agent in support of my assertion that the Nawab always regarded myself and my wife as his heirs.

21. The proposition I submitted in the 4th para. of my case as established by this evidence was more extensive than it was necessary for me to prove, viz : "that the "Nawab having two daughters only and no male issue, "very early contemplated making his future sons-in-law "with their wives his heirs, and that having once formed "this resolution he retained it till the day of his death."

22. It is of course only necessary for me to shew that His Excellency had this intention with respect to my brother and myself, and then to explain why my brother is not a claimant to-day; and I might disregard altogether any consideration of the terms on which the prior treaties for the union of the Nawab's daughters with the grandsons of the King of Delhi and afterwards with the brothers of the late Nawab of Baroda proceeded.

23. But as Mr. Frere, without distinctly doing so, seems to question the correctness of my assertion of the Nawab's intentions, even as regards the grandsons of the King of Delhi and the brothers of the late Nawab of Baroda, I will briefly support my position which, if true, is important as shewing the object the Nawab had at heart with regard to the disposition of all that he should leave behind him.

24. It appears that in March 1830 (see para. 15 of the Agent's report) the Nawab, who was then contemplating the marriage of his daughters with the grandsons of the King of Delhi, forwarded through the Agent a confidential letter to Government "connected" (as appears by the Agent's records) "with the future disposition of his honors and fortune."

25. Meetaram, the Nawab's Dewan, in his evidence taken before the Agent on the 29th March 1852, distinctly stated what the Nawab's wishes were, namely to continue the succession to his sons-in-law, and he has deposed that he himself was dispatched to Bombay to obtain the sanction of the Government to this object. Mr. Frere's note of Meetaram's evidence, cited in the margin of the 15th para. of the report, strangely omits this, the obviously important part of Meetaram's mission, and either it is not on Mr. Frere's English notes or he has overlooked it.

"I went to Bombay to give intimation of the proposal of marriage "with the Princes. There I informed Mr. Romer that it was the in- "tention of the Nawab to have his two daughters married with the "two Princes that had arrived from Delhi, and that those Princes as "sons-in-law and the daughters were to be the heirs, therefore he "(Mr. Romer) should make an arrangement regarding the same. In "reply Mr. Romer intimated, that the Princes of Delhi were not of "the Nawab's caste nor belonged to his family and that therefore it "was proper for him (the Nawab) to marry (his daughters) to some "respectable men belonging to his caste, in which case Government "will give effect to his intention."

26. The treaty for the marriage of the Nawab's daughters with the Delhi Princes having gone off, a negociation commenced for the marriage of the Ladies with the brothers of the late Nawab of Baroda, and the two letters (94 and 95) shew, I maintain, the terms of the intended alliance, namely, that the sons-in-law were to be the Surat Nawab's heirs.

27. Mr. Frere scarcely denies this, though observing (para. 16) that they " shew rather what the object of the " Nawab of Baroda was, than the Nawab of Surat's inten- " tions, for though it (one of the letters) would appear to " refer to the necessity of some guarantee from the Govern- " ment of Bombay, it shews that the Nawab of Baroda's

" object was to get his brothers the sonship of the Nawab
" not only the son-in-lawship."

28. If His Lordship in Council will turn to these letters, he will perceive that they proceed on the basis that the " sonship," or, in other words, the successorship, to the Nawab of Surat, was a matter agreed upon and not at all in discussion, but the Baroda Nawab was urging that it ought to be guaranteed by the British Government.

29. In his 17 para. Mr. Frere says, " In the latter of " the two letters the Nawab of Baroda again appears to " refer to a guarantee of his sons' inheritance from Bombay " etc." Precisely so; that is all that I say. These two letters clearly evidence the Nawab of Surat's intentions that his sons-in-law should inherit to him and the desire of the Nawab of Baroda to have that guaranteed by the British Government.

30. After the above letters had been written, the Nawab of Surat received Mr. Chief Secretary Norris's communication of the 23rd November 1830, in reply to the Nawab's confidential application to Government of March previously, and which reply, Mr. Frere in his 15th para. says, was to the effect that " Government were much " afraid that it will be contrary to all usage to meet the " wishes" of the Nawab, and the Agent observes (para. 17) with reference to this letter, that " Government not " having responded to the Nawab of Surat's wishes, it " cannot be argued* that his hopes and intentions remained " the same after November 1830 as they were before," and he further observes " that the same hopes" (viz. of the heirship to himself) " need not have been held out to Meer

* Note.—See contra the Nawab's letter to Mr. Williams, 2nd May 1834. Past para. 56.

"Surfaraz Alee, as it was about three years after the refusal "was received from Bombay that the treaty was entered "upon for the marriage of the Nawab's daughters Nujeeb-"ool-Nissa Begum and Bukhtyarool-Nissa Begum to "his (Meer Surfaraz Alee's) sons Meer Ukbur Alee and "Meer Jafur Alee."

31. But why, it may more rationally be asked, should a letter from Government, containing the para. in the margin and not "a refusal" nor merely that Government were "much afraid that it will be contrary to all usage to meet the wishes" of the Nawab, (see the Agent's 15th para.) create a change in the Nawab's intentions? His hopes of accomplishing his wishes may or may not have remained the same, and probably rose and fell, from time to time, with the interest taken or not taken, in his affairs, by the persons, for the time being in public authority; but it is contrary to all experience, as evinced simply by the daily records of Government, and quite inconsistent with Indian character to suggest, that a first refusal by the British Government of the wishes of a native Prince will be followed by an abandonment of them on his part, but, as has been seen, the Government letter, though discouraging, is by no means a refusal.

No. 4, dated 23rd November 1830. Para. 2. — In reply I am instructed to observe that the Governor in Council is unable to ascertain how far attention can be given to the Nawab's proposition without public reference to the Supreme Government, and is much afraid that it will be contrary to all usage to meet the wishes of this respectable Prince.

(Sgd.) C. NORRIS, Chief Secy.

32. It is difficult to understand the Agent's meaning that "the same hopes *need not* have been held out to Meer Surfaraz Alee." It is perfectly certain that they were held out, and this appears plainly in the Nawab's letter to and

reply from Mr. Williams, the Resident at Baroda—a correspondence which it is impossible for my opponents to impeach, and which will prove my case, if all the other documents are thrown aside.

33. But I have, in fact, produced in this case a positive agreement between my father and the Nawab detailing the terms and conditions of the marriage (Exhibit 97).

34. It fixes the dowry of each of the Ladies at one Lakh of Rupees. It provides that the expenses of the marriages shall be borne equally by my father and the Nawab; that my brother and myself shall reside with the Nawab at Surat; that we were never to take the Ladies beyond the City without the Nawab's consent; that His Highness would make a will in the name of my brother and myself regarding the succession and inheritance of the property; that we were always to carry the usage and ceremony of the house of Hamdanee into execution, and were never to marry a rival to the Nawab's daughters.

35. Mr. Frere observes (18th para.) that this document has been impeached by the opposite parties, as it was not produced when Sir R. Arbuthnot was enquiring into the claims of the Nawab's heirs, and he mentions that this omission was the more extraordinary as the writer of it, and Meetaram who wrote the rough draft sent by the Nawab, were with me at the time Sir R. Arbuthnot was conducting the enquiry and aiding by their advice the Barrister employed.

36. But Mr. Frere does not reject either the draft with the Nawab's mark on it, nor the sealed agreement bearing the seals of my father, my deceased brother and myself, nor the letter of the Nawab under his seal forwarding the draft agreement to my father; nor could the Agent have rejected

these documents in the face of the evidence before him of their genuineness.

37. It is true that the agreement is disputed by my opponents ; but, as of course, every document produced by me would be disputed by them, to throw discredit on my case, although, as before mentioned, they have not denied that the intentions of the Nawab were all in my favor. It is also true that the agreement and the drafts were not produced before Sir R. Arbuthnot, as they could not at that time be found. The rough draft, with many other of the Nawab's papers, was with Meetaram his former Dewan, and the sealed agreement was amongst the papers of Mahomud Alee Beg, the minister of the late Nawab, and was only very recently discovered, and the draft, with the Nawab's mark on it, forwarded by him to my father, was amongst his papers at Baroda. But any doubt as to the genuineness of these documents will be removed by the earliest memorials presented on behalf of my deceased wife and myself to Government after the death of the Nawab, extracts fiom which are given below, and from which it will be seen that it was, from the beginning, part of our case that a positivo agreement had been made, at the time of the marriages, between the Nawab and my father, that his sons should be the Nawab's successors.

38. Extract from a translation of a Persian memorandum, from Ameerool-Nissa Saheb to the Agent, dated 27th August 1842:

" By the same token His late Excellency the Nawab, thinking that " God Almighty gave him no male offspring, at the time of the " betrothal of his daughters, entered into an agreement with Meer " Surfaraz Alee Saheb, engaging that from the time of marriage, His " Excellency's sons-in-law were to live with him, for he had appoint- " ed them his heirs and successors ; *mutual writings on this subject* " *have been exchanged.*"

39. Extract from a translation of a memorial presented to the Hon'ble the Governor by Meer Surfaraz Alee Khan, dated 8th October 1842:

" After His Excellency the late Nawab sent me a mission to Baro-
" da charged with the proposal of the marriage of his daughters to my
" sons, requesting that my sons were to remain with the Nawab after
" the wedding. To this, I replied, that I could not agree to my
" sons living at Surat apart from me; but His late Excellency
" answered that my sons were not only to be his sons-in-law, *but, as*
" *he had no male issue, he would appoint them his heirs and succes-*
" *sors*, and that after the celebration of the nuptials, the ceremonies
" of the succession would be promulgated to the high and low."

" *All this having mutually passed in writing*, His late Excellency
" wrote a letter to Mr. Williams, etc."

40. Extract from a translation of a memorandum presented by Ameerool-Nissa Begum to the Agent Sir R. Arbuthnot, dated November 1842:

" I here beg to state on account of Meer Jafur Alee Khan Baha-
" door my dutiful son-in-law—When the negociation for the
" marriage was going on, Meer Surfaraz Alee Saheb at first would
" not agree to his sons living in Surat, but my late husband (the
" Nawab) persuaded him and sent him *in writing his resolution of*
" *appointing his sons-in-law his successor.* If you ask Meer Saheb
" upon the subject of the proofs of this subject, he will satisfy you.
" After the day of the marriage my husband never separated Meer
" Jafur Alee Khan from his sight. He would not allow him to ride
" a horse. He kept him always with him in the manner of his heir
" and successor and all the City knows this, and the European gentle-
" men used to see him always sitting next to His Excellency. He was
" ordered on the grand processions to proceed on his elephant in front
" of His late Excellency as an heir apparent. In short he lived
" with him exactly in the manner of a son, both in the Courts
" and at home."

41. These quotations will be quite sufficient to convince His Lordship in Council that, though the agreement

(Exhibit 97) was not produced before Sir R. Arbuthnot, its existence had always been asserted and is no new idea brought forward for the first time before Mr. Frere.

42. Indeed it will be obvious to Government, on a moment's reflection, that there could not have been a marriage between the sons of a person of rank at Baroda and the daughters of the late Nawab of Surat without a previous treaty, some correspondence, and finally a written compact fixing the dowry of the Ladies and any other terms that might have been agreed upon.

43. It will be equally manifest that my father, who knew very well the terms on which the negociation, for the marriage of the Nawab's daughters *with my own cousins* the brothers of the late Nawab of Baroda, proceeded, would never have consented to allow his two eldest sons, namely my brother and myself, to leave his family and reside ever afterwards, as we confessedly did, with the Nawab of Surat, except upon the terms that we were to succeed to His Excellency's wealth.

44. It is in the nature of things, that these terms should have been the subject of a positive written contract before the marriages took place, and no one of my opponents, who of course know very well what were the actual terms of the marriage compact and which of course were quite notorious in both families, has suggested *that they were different from those contained in the sealed agreement* (Exhibit 97).

45. When, therefore, the circumstances are really analysed and reflected upon, the non-production by me, of the marriage contract, before Sir R. Arbuthnot, should have excited that gentleman's surprize—the production of it *now* can excite no surprize; and with respect to the genuine-

ness of Exhibit 97, the only important part of it, namely, the heirship and succession, is fortunately put beyond the reach of controversy by the correspondence between the Nawab and James Williams, Esq., the Resident at Baroda, which will be presently adverted to.

46. The agreement was produced by me to the Agent as it was found, that is to say, in the envelope in which it had been originally despatched from Baroda by my father, with my father's letter to the Nawab dated 5th Shaban 1249, 17th December 1833, and bearing my father's seal; and on the envelope is a memorandum in the handwriting of Itcharam, a Persian writer in the employ of the Nawab, who died nearly 15 years ago, and which memorandum is as follows:

"Memorandum of the Agreement of Sahihzadees (Princesses) the "most august with Meer Surfraz Ally, with the letter."

47. A further memorandum relating to the same agreement, was found amongst the Nawab's Dufturs in the Agent's charge, on their being examined during the recent enquiry before Mr. Frere. It is also in the handwriting of Itcharam, but I have no copy of it and cannot give a translation of it.

48. Meetaram Dewan, in his evidence taken by Mr. Frere on the 29th March 1852, deposed with reference to Exhibit 118 (the rough draft of the agreement) as follows:

"I say the late Nawab caused me to write this draft, to which he "affixed his signature. Having caused a fair copy thereof to be made "he sent it to Meer Surfaraz Alee Saheb with a request that he "should give a writing to that effect. This is the same (draft.)"

49. Zeeaool-Huk, a Moonshee of my father, (whose deposition was taken in the course of the late enquiry by J.M. Davies, Esq., the Resident at Baroda) produced from amongst my father's papers and gave to that gentleman

the draft agreement with the Nawab's mark thereon deposed to in the above extract from Meetaram's evidence.

50. Zeeaool-Huk at the same time deposed as follows: "Having seen the Kurarnama" (Exhibit 97 which had been sent to Baroda to the Resident by the Agent to shew to the witness) "I state that it is in my handwriting, "and this Kurarnama was written previous to the marriages of the sons of Meer Surfaraz Alee and during the "time of the negociation for the marriages."

51. My deceased brother, on the 27th day of April 1852, and when lying at the point of death in the Palace of Surat, to which place the Agent repaired to take his deposition, confirmed the genuineness of the agreement (Exhibit 97); and further I solemnly affirm that my own seal on it was affixed by me when in my father's house at Baroda and in the course of the treaty for the marriages of myself and my brother with the Nawab's daughters.

52. The letter from the Nawab to my father dated the 29th March 1834 (Exhibit 19) and referred to in the Agent's 19 para. is also in confirmation of the agreement, and is a distinct appointment of my brother and myself as the Nawab's successors, rendering no Will after that necessary as a matter of the least concern or importance.

53. The Agent (para. 20) mentions that the genuineness of this letter is disputed by the opposite party; but no ground for disputing it is assigned, nor does the Agent himself throw any doubt on the document.

54. Mohunlall Moonshee, on the 29th March 1852, (100) deposed regarding it as follows:

"That a document filed No. 19 which has been shewn to me is "*of my handwriting;* I wrote it on the Nawab's order. I and my "father were in the Nawab's service."

55. And the above deposition has not been contradicted. Nor can the parties dispute the Nawab's seal.

56. After the celebration of the marriages and my father's return to Baroda, the Nawab, at his request and for his satisfaction, communicated what had occurred to James Williams, Esq., the Resident at Baroda, in the following letter dated 2nd May 1834:

"In this time by the grace of God the marriage of my two daughters "has been completed with all propriety. The illustrious sons Syud "Ukbur Alee Khan and Syud Jafur Alee Khan are incomparable "in dignity and ability. I am exceedingly pleased with them and "have appointed them my successors. *I shall request the same of "the Hon'ble British Government and for the same reason I beg of "you to keep this matter in your reflection.* Meer Saheb will men-"tion it to you in detail, and after a few days my confidential friend "Mirza Abdoolla Beg will be sent to wait upon you agreeably to the "request of the Meer Saheb. Written on the 22nd of Zilhej, 1249 "Hijree, or 2nd May 1834."

57. This important letter Mr. Frere seems entirely to have overlooked, for he says in para. 20—"The next do-"cument on which Meer Jafur Alee relies is a letter (20) "dated 24th June 1834 from Mr. Williams" &c.—thus passing by the Nawab's letter. However Mr. Williams' reply was as follows:

"Your kind letter, favored by Meer Surfaraz Alee Saheb, allud-"ing to the succession of Syud Ukbur Alee Khan and Syud Jafur "Alee Khan (may they live long) to yourself, having been written, "its perusal gave me great pleasure. *In this matter I write to "you as a friend that I will use all the endeavours in my power with "the Hon'ble Government in the object above cited.* You should "think of no omission on my part as a sincere friend. The alter-"cation now impending between the Sirkar of the Guicowar and "the Meer Saheb, on account of a misrepresentation made by some "person, will soon be cleared off, if it please the Almighty God. In

" the mean time leave has been granted to Syud Ukbur Alee as re-
" quested by you, but permit him to come to Baroda for a few days
" when the Meer Saheb will require his presence."

58. The Agent, in noticing Mr. Williams' reply, observes as follows :—" This letter, being written so shortly " after the marriage and by a person having no authority " himself to sanction or disallow the adoption, perhaps " needs no comment."

59. But Mr. Williams' letter with that from the Nawab which elicited it, is of vital importance as shewing the compact between him and my father. It is quite immaterial whether Mr. Williams had or had not authority to sanction the adoption. I cite the correspondence as evidence of the Nawab's intentions and wishes and as shewing on what terms the marriages were concluded, and as being therefore a complete answer to Mr. Frere's argument, (see his 17th para.) " that Government not having responded to " the Nawab of Surat's wishes it cannot be argued that his " hopes and intentions remained the same after November " 1836."

60. The Nawab's letter to Mr. Williams is fortunately on the Dufturs of the Resident at Baroda, with a memorandum in Mr. Williams' own handwriting on receiving it; and the genuineness of this, and of Mr. Williams' reply, it is not in the power of my opponents to dispute.

61. Although going so much out of his way to cut down the natural effect of the documents I produced evidencing the intentions and positive arrangements of the Nawab, nay his actual appointment of my brother and myself to be his successors, so far as it was in his power to constitute us as such; it is not until the Agent comes to consider the effect of the Nawab placing my infant son on the " Musnud " and the letter of His Excellency to my

father announcing the circumstance, that Mr. Frere gives full scope to that peculiarly artificial and one-sided reasoning which pervades this part of his report.

62. He examines this transaction in paras. 22 to 24. He says (para. 22) that the Nawab's letter to my father announcing that with the consent of myself and wife he had appointed our infant son his successor, though disputed, might have been admitted—"so opposed is it to the terms "under which Meer Jafur Alee would contend the mar-"riages were contracted."

63. In the next para. the Agent says, "the Nawab had "promised to make his sons-in-law his successors: one, the "elder, could no longer be so, and the younger had every "right to expect that the Nawab would fulfil his intentions "towards him"—and yet the single fact of my waiving my right in favor *of my own son*, is actually used by the Agent as proof, "that the Nawab had no intention of making his "son-in-law (myself) his heir."

64. It is difficult to reconcile these paras. or to understand what the Agent's views as to this transaction really are. In one place (end of para. 22) he seems to treat it as a proof of the non-existence of the marriage contract as to the successorship. In another (para. 23) he appears to regard it as the breach of a contract admitted to exist, but which the Nawab had no intention to fulfil. In a third place (para. 24) the Agent says "that this (the placing my son on the musnud) "was a grave and deliberate act requires confirmation"; which seems to imply, that before I can cite it in my favor, it must be confirmed.

65. Certainly the Agent might, with as much ingenuity and accuracy, have argued that the Nawab, in placing my infant son on the musnud and presenting the state

jewels to him in the presence of all his officers, as described by Atmaram Dewan, (26) then and there abdicated in favor of his grandson, as that his doing this, with the consent of my wife and myself, is proof that the marriages were not contracted in the terms I have stated, or that the Nawab broke faith with my father and myself.

66. What was our consent necessary for, if we had not something to give up? Why does the Nawab write to my father saying—" and at the desire of his parents I have appointed him (our son) my successor"—if it were not that he was announcing a substantial fulfilment of the marriage contract, varied only by new circumstances with our consent, and which, His Excellency necessarily supposed, would be as gratifying to my father as it was acceptable to ourselves.

67. But my infant son having died before the Nawab, things naturally and necessarily reverted to their former state—and that His Excellency to the hour of his death regarded his only surviving child and myself as his heirs, and we as the successors of his choice, if the succession should be continued, was well known not simply to all the household but throughout the City, and, I confidently add, to every European functionary at Surat and to most of those throughout Guzerat. Indeed the very fact of my being taken out of my own family and country to reside with the Nawab in his palace at Surat, is pregnant with proof that I was to fill a nearer relationship to him than that of a mere son-in-law.

68. The Agent says (para. 24) that there is no proof of what the Nawab's intentions were after the death of my son

Ameeroddeen; adding, "we have the evidence of witnesses "that he looked upon Meer Jafur Alee as his son." Surely this concession, coming after the positive contract at the marriage and the letter to Mr. Williams, establishes all that I need contend for. Mr. Frere continues, "but we "have also the evidence that the Nawab was entirely in "Mahomud Alee Beg and Futeh Mahomed's power, and "would not, when on his death-bed, allow Meer Jafur Alee "to sit near him."

69. The force and application of the first part of this remark is not very intelligible, unless it is meant to be insinuated that the above individuals were in *my* power; but the latter part of the remark implies that they were not.

70. It is not of much importance, as affecting the point under discussion, whether the Nawab, when in the last agonies of cholera, allowed myself and his daughter and others confessedly dear to him, to approach him or not; particularly when it is said that he was entirely in the power of the two persons named. No one says or insinuates that the Nawab on his death-bed turned against my wife and myself, or had done so previously, or was displeased with me; and the recognition of our title as the Nawab's heirs by all his retainers and household immediately on his death, though it would not "constitute" us "his heirs" (as observed in Mr. Frere's 10th para.) is valuable proof that nothing occurred in the last moments of His Excellency to induce his followers and household to regard us in any other character than as his chosen successors.

71. But, in fact, the extract which Mr. Frere has given in the margin of his 24 para. from Moonshee Lootfoolla's evidence is not correct. This passage in the margin is from the Guzerattee record of his evidence, and the witness, if appealed to, will state that he did not mean to say or imply that I was not permitted to approach the Nawab during his last illness—a supposition indeed quite contrary to the fact.

NOTE.—When His Highness fell sick, his servants attended him; sometimes we went to see him. Meer Jafur Alee and I went together, and Mirza Mahomed Alee Beg, Futeh Mahomed and other servants went near him. No other person was allowed to go to His Highness except the persons above cited. (Translated by himself.)

(Signed) LOOTFOOLLA.

72. The Agent further argues (24th para.) that because the Nawab did not make me any *new* promises after the death of my own son nor make a Will, it cannot be concluded that the Nawab meant "that son-in-law, for whom "a Will appeared to be requisite to constitute him heir, to "be his heir without one."

73. But why was a Will requisite after the Nawab's letters to my father (Exhibit 19) and to Mr. Williams* distinctly fulfilling his contract with my father? Why were new promises needed to *me*, when I had voluntarily waived my rights in favour of my own son and who did not live to enjoy the succession? Who has been called by my opponents to contradict my evidence of the Nawab's intentions? Where will you find a positive contradiction even in their

* Letter dated 2d May 1834, (para. 56).

replies? What single circumstance is referred to by the Agent, or alleged by any person, to indicate a change in the Nawab's mind towards his own issue and myself? What witnesses have been called by my opponents to prove—what facts elicited in the course of the enquiry can be cited to lead, in the remotest degree, to the supposition—that the Nawab though keeping me with him at Surat and looking upon me to the last "as his son" had changed his intentions? The rational argument derived from the Nawab's intestacy is just the reverse of that used by the Agent; for if the Nawab had changed his intentions, he would have notified it by the expression of a different intention, and the state of things which led to the change would have been known to the family and could have been proved, whereas the non-existence of a will, where no change of design has taken place, is more naturally attributable to sudden death or other circumstances of a personal nature: and yet the Agent sums up this part of the case with observing that—"the "more rational conclusion to arrive at appears to be, that, "disappointed in heirs male, both of his own and of his "daughter's, and conscious that his dignity as Nawab must "become extinct at his death, he made no will or expres-"sion of his desire how his property should descend, but "left it to follow that course which the law or ruling au-"thority might prescribe"—that is to say, that he was willing to allow his heirs as defined by the Mahomedan law to inherit to him or leave it to the British Government to dispose of as they might think proper, in other words that he anticipated Act XVIII. of 1848—an argument apparently suggested to Mr. Frere's mind by that Act.

74. Now that this, instead of being "the more rational conclusion," is contrary to all probability, and opposed not simply to my evidence but even to the assertions of my opponents, I will at once demonstrate by calling Meer

Mooeenoddeen Bukhshee himself (to whom three sixteenths have been awarded by Mr. Frere) as a witness.

75. In his reply, handed in to the Agent on the 4th May 1852, Meer Mooeenoddeen says :—

Para. 44. "Shahzadee Begum, niece of His Highness, was offered "in the first instance to me by him in marriage. Our nuptials "however were postponed, when several of the respectable inhabi-"tants of this place, as well as some European gentlemen, repre-"sented to His Highness verbally, and by messages, the necessity of "completing them, *but the Nawab was inexorable*; until at last he "was obliged by the pressing messages from Mr. Sutherland to "yield. He made preparations for the celebration of her marriage "and sent Ardaseer Dhunjeeshah, who was then the Native Agent "in Surat, with a draft of a "Farguttee" or release, which ran to "the effect that *I was not to set up any claim to his* (the late Na-"wab's) *inheritance*. This proposal of his of course I did not accede "to and consequently he refused celebrating the marriage."

Para. 45. "Ardaseer pleads his inability to depose to the subject "of the draft he had brought to me, in consequence of its having es-"caped his memory ; but this much he admits, that I had declin-"ed passing a Farguttee or release for not claiming a share from "the Nawab's estate."

Para. 46. "His (the Nawab's) main object in doing so *was no other* "*than to guard against claims being set up against the inheritance* "*he himself would leave.*"

And, accordingly, the marriage spoken to by the Meer Mooeenoddeen Bukhshee was not celebrated during the Nawab's life.

76. The Agent, in para. 62, speaks of Meer Mooeenoddeen in the following words :—"It is very certain (being "admitted etc.) that the Nawab had no partiality for "Meer Mooeenoddeen, in fact hardly *tolerated his presence*."

77. It is equally certain that the Nawab was thoroughly alienated from Padshah Begum, though not, according to the Agent's finding, actually divorced from her. Meer Kumroodeen, a distant relative and in poor circumstances

was not in any favor with the Nawab, and yet, with the undisputed proof of the Nawab's affection for his own daughter and myself, how can it be argued as "the more rational conclusion" that the Nawab designedly left his property to be shared in by Meer Mooeenoddeen Bukhshee, Padshah Begum and Meer Kumroodeen, under the Mahomedan law.

78. Again, that the conclusion Mr. Frere asks the Government in the latter part of his 24th para. to accept "as the more rational" "and the more probable" is neither one nor the other, is shown by this—that it is wholly inconsistent with His Excellency's conduct throughout the negociations for the marriage of his daughters with the Delhi Princes, and afterwards with the brothers of the late Nawab of Baroda, and finally with my brother and myself. Prior to the very first of these negociations, the Nawab had been disappointed of all male issue to himself and despaired of ever having any, and yet throughout each treaty the Nawab was most anxious to secure to his daughters in the persons of their husbands the succession to his Gadee and estates. The Nawab could scarcely have contemplated what has occurred—the refusal of succession to the Gadee to his surviving daughter's husband and the assumption by the British Government of the distribution of his wealth. He wished and intended and endeavoured to obtain the consent of the British Government to the succession. That consent was of value only as regards the Gadee, for the British Government could not interfere further with the succession. The Agent's suggestion that the inability to effect the whole of his wish, should make him change it even in regard to that which did not require the sanction of the British Government, is surely not consonant with sound reasoning. The expressed wish was to benefit to the full extent of his power certain objects of his

regard and ambition, and the Agent insinuates that he changed that intention altogether, because Government would not accede to that portion of the arrangement to which its sanction would be necessary.

79. Furthermore the basis of the Agent's reasoning on this point entirely fails, for why should the Nawab have despaired of heirs male through his daughter, my late wife, who, prior to His Excellency's death, had given birth to five children, three daughters (of whom one only is now alive) and two sons (both of whom unhappily died in the Nawab's lifetime), and my wife was pregnant at the time of the Nawab's death, as was of course well known to His Excellency.

80. To make out the Agent's reasoning at the close of his 24th para, it is necessary to assume that the Nawab had ideas which there is nothing to shew and not the slightest reason to believe he ever entertained, and which it would be quite inconsistent with his whole conduct throughout to suppose he did entertain.

81. Bu. even if it had not been shewn (para. 25) "what the Nawab's intentions were with regard to his "property,"—even if Mr. Frere's suggestion that "the more rational conclusion to arrive at," viz. that the Nawab had no particular intentions "but left it to follow that "course which the law or the ruling authority might pre- "scribe,"—still the moral obligation to fulfil his contract with my father and myself would remain; and I should trust that "the ruling authority" would feel a greater confidence that they were carrying out the wishes of the Nawab in fulfilling that contract, than in giving over a large portion of the estate to one whose sight he hardly tolerated, to another whom he never saw for twenty years, and to a third a distant relation for whom he never evinced any regard whatever.

82. Having shewn, as I trust I have done conclusively, in the preceding pages, that the Nawab's intentions with respect to the devolution of his property are not a matter of obscurity as suggested by the Agent—at any rate on *two* points namely, in regard to their being entirely in favor of His Excellency's own issue and myself, and most adverse to some of those now claiming as his heirs by the Mahomedan Law; I would further submit that even if this were doubtful, the claim I am preferring, on behalf of my children, is considerably strengthened and enhanced by what has been an admitted usage in the Nawab's branch of the Hamdanee family. I say "admitted" because it has been solemnly recorded by them as such in writing.

83. Whatever may have been the legal position of the late Nawab, Government, in distributing his estate, will no doubt be regulated by what is just and equitable as well as by what is legal; and therefore, if my opponents Meer Mooeenoddeen Bukhshee and Meer Kumroodeen could have shewn that the wealth of the Nawab, or that of his ancestors, had been encreased by contributions, under the Mahomedan Law, from the estates of their branches of the family, they would, on equitable grounds, have been entitled now to share in the estate of the deceased Nawab under the Mahomedan Law.

84. On the other hand, it is equally clear that if the Nawabs of Surat and their families have never taken any thing from the ancestors of the Bukhshee and Meer Kumroodeen, when entitled to do so under the Mahomedan Law of descent; it would be most unjust to divide the Nawab's wealth with them *now* for the first time, to the prejudice of his own issue.

85. This position—the only important one advanced by me with reference to the family usage—the Agent, strange to say, does not touch upon. I might admit the

whole of Mr. Frere's reasoning in paras. 27 to 38 inclusive to be correct (in which he examines the evidence as to the existence of a family usage or not), but still it would not touch the point, and the only one I contend for—namely—that it would be inequitable, if the collateral branches of the Hamdanee family have never shared with one another before under the Mahomedan law, to introduce that division now for the first time.

86. One single instance only of a divison, not between the two branches, but between the late Nawab and his own mother, Larlee Begum, has been pointed out. I equally refer to that very division and to the circumstances under which it was made, and to the agreement solemnly entered into on the occasion, as clearly establishing the usage of the family to be as I have stated.

87. But it is first necessary, before examining the instance adverted to, to correct a grave error the Agent has committed with regard to the estate of Sufdur Khan and which pervades the whole of his examination of the question of usage.

88. Sufdur Khan was a Mogul : the family of Alee Hamdanee were Syuds. The former having usurped the Nawabship of Surat, died (according to the minute of Governor Duncan on the history of that City) in A. D. 1762 without male issue but leaving a widow and four daughters.

89. It will be obvious to his Lordship in Council at the outset, that no member of the family of Alee Hamdanee could *under any circumstances* inherit a share of Sufdur Khan's property.

90. It is equally clear that as Sufder Khan left no male issue, his widow and daughters would naturally divide between them whatever the ruling authority in Surat for the time being did not appropriate to itself, and

that one of Sufdur Khan's daughters marrying into the family of Hamdanee, would necessarily take her share of her father's wealth with her, without any violation of the custom of that family not to divide between themselves.

91. Accordingly, the first deed of partition referred to by Mr. Frere (para. 27) is dated in the same year that Sufdur Khan died, and it is a partition of a part of Sufdur Khan's personal property amongst his widow and four daughters, one of whom, Mehtab Khanum, married Meer Fukroodeen, a son of Nawab Meer Mooeenoddeen alias Meeah Uchun, and in which deed Meer Fukroodeen appears as a "Wakeel" on behalf of his wife, and Meer Nujmoodeen Bukhshee, who had married a grand-daughter of Sufdur Khan, appeared as a Wakeel for two of his wife's aunts.

92. It is not necessary to notice the deeds (55-56) beyond observing that the inference of the Agent as to the latter is an error, as will be seen presently.

93. In 1815, however, some landed property of Sufdur Khan's appears to have been partitioned for the first time. It was divided (Exhibit 61) into 4⅛ shares; and one share was given to the Nawab Meer Nusseeroddeen, one share to the Bukhshee Meer Sudroodeen, and two and one-eighth shares to Meer Wulleeoddeen, the son of Meer Hyder (who had married one of the daughters of Sufdur Khan).

94. It is very difficult to understand or explain the origin of this partition. The title of the Nawab and of the Bukhshee to the two shares assigned to them respectively does not appear on the face of the deed, and it is not improbable that Meer Wulleeoddeen was obliged to comply with the demands of two all-powerful authorities in Surat, as the Nawab and the Bukhshee then were, and that they, under colour of their connection by marriage with the

ladies of Sufdur Khan's family, were advancing claims to which they had no strict right. Fukroodeen, the first Nawab's son, having married Sufdur Khan's daughter Mehtab Khanum, died leaving a daughter named Chandnee Begum, but no male issue. Meer Nusseeroddeen may have preferred in her right and as on her behalf a claim to her mother Mehtab Khanum's share in Sufdur Khan's hitherto undivided property. But be the explanation of this partition (38) what it may, it is perfectly obvious that no part of Sufdur Khan's property *as such*, could have descended on any member of the family of Alee Hamdanee, and if any of it did descend on Meer Nusseeroddeen, it must have been as heir to his own uncle Fukroodeen and not by way of inheritance from Sufdur Khan.

95. When, therefore, the Agent states (para. 27) that the Nawab, by a deed dated the 16th August 1827,* (38) conveyed the property he had derived under the partition of October 1815 to Meetaram as a gift, "the "Nawab declaring that it had descended to him from Suf-"dur Khan," it is quite evident that the Agent is either misinterpreting the deed or that the Nawab's declaration was quite inaccurate and suggested an obviously erroneous inference; as the Nawab could under no circumstances

* NOTE.—The words of this deed are as follows:—" Therefore taking "in consideration the good services of that faithful person (Meetaram), "I have granted in perpetuity 12 Beegas 3 Busooh and 9 Biswasee of "land cultivated, consisting of — pieces of land, below situated in the "street of Salabutpoora adjoining Roostumpoora within the citadel of "Behmdole, the happy or the blessed Port of Surat, and named Ahmud-"dee Bhag, together with two Pucka Wells and different kinds of Trees, "which partly has been derived from the late Sufdur Khan and partly "purchased by money from the money of my late father Meer Nusseerod-"deen Khan descended (or come) as inheritance."

"inherit" any thing from Sufdur Khan, nor, for the same reason (vide closing part of para. 27) could Meer Nujmoodeen have "inherited" any thing from Sufdur Khan, though both of them could have inherited property that *originally belonged to Sufdur Khan*, and which, by marriage, had become transferred to some member of the family of Alee Hamdanee to whom they might claim the right of inheritance.

96. The non-observance, however, of this distinction, and which has completely misled the Agent, goes to the root of his reasoning on the question of the custom in the Nawab's family.

97. Thus the Agent having shewn, as he supposed, by the above deeds of partition, a custom in Sufdur Khan's *family* to divide, proceeds (in para. 20) to consider whether this custom should be applied "to another (family) of an entirely different lineage" (meaning the Nawabs); and he decides that it should, simply because "we have seen above "(38) that the late Nawab himself admits having inherited "from Sufdur Khan, so that the position, that it was the "custom of the family not to encrease by sharing with col-"laterals even of a different tribe, has failed."

98. This sentence contains two errors; first, in supposing the Nawab to "admit" what palpably could not be the fact—and one would have thought that Mr. Frere himself would have seen that there can be no "collaterals" between "different tribes"—and secondly, in the misconception which it shews of the character of the usage affirmed by me, which is simply that the two collateral branches of the family of Alee Hamdanee—that is to say, Zainoddeen alias Meeah Meethun and his descendants the Bukhshees on the one hand, and Meer Mooeenoddeen Nawab alias Meeah Uchun

and his descendants, the Nawabs, on the other—were not in the habit of dividing with one another, or, where they intermarried, of allowing their wives to take the shares the Mahomedan law would give them in the wealth of the branch of the family they had left; and, further, that in the Nawab's branch their wealth has never descended according to the Mahomedan law. The whole of the reasoning therefore in the Agent's 30 para. is beside the point which it affects to decide and dispose of.

99. I now return to the agreement for a division (for no division in fact ever took place) between the late Nawab and his mother, shortly after Meer Nusseeroddeen Khan's death, and which, whatever may be *conjectured* about it as a settlement of disputes between the Nawab and his mother, is decisive, I submit, of a then admitted usage in the two branches of the Alee Hamdanee family not to divide with one another.

100. The Agent, however, (para. 33) considers that the agreement does not prove the position contended for by me, (nor that for which my opponents refer to it, namely, that it was customary in the Nawab's family to divide). He observes "that the more natural inference to draw from "the abjuring clause, and the agreement generally, is either "that Meer Sudroodeen had advanced some claim for his "own share of the property and that the Nawab would not "come to terms with his mother until Meer Sudroodeen "had withdrawn his pretensions, or that the Nawab requir- "ed to be assured that her brother, who might have quoted "this as a precedent, would not likewise prosecute any "claims he might have to a share in the property."

101. I deny that the first of these inferences can be justly drawn from the agreement—an inference quite at

variance with the history of the dispute even as given by the Agent himself (para. 32).

102. It is quite clear, if Atmaram Dewan is to be believed, that the dispute between the Nawab and his mother *had nothing whatever to do with any questions of inheritance,* though it terminated by a concession to her of a portion of the property equal to the widow's share under the Mahomedan law.

103. Atmaram was the Nawab's Wakeel on the occasion, and, as such, settled the terms of the agreement with Larlee Begum and her Wakeels.

104. The terms of the agreement—the various detailed clauses—shew plainly that the dispute was one entirely between the Nawab and his mother, and their correspondence with Mr. Elphinstone and Mr. Romer establishes the same thing.

105. No witness or party, in the course of the enquiry, has suggested that Meer Sudroodeen had advanced any claim of his own to share in the property. Meer Mooeenodeen Bukhshee does not say so. Then why should the Agent *infer* that Meer Sudroodeen had done so, and that the Nawab would not come to terms with his mother until her brother had withdrawn his pretensions?

106. I rely strongly on the fact that Meer Suddroodeen and other members of his family had, *at that time,* claims on the Nawab under the Mahomedan code, as pointed out in paras. 63 and 64 of my reply, and yet did not prefer them; and I contend that their silence at that time and since, and their acquiescence in the terms of the 13th clause of the agreement, is decisive of the truth of the family usage therein recorded.

107. The Agent argues (para. 35) that the deed was

only "intended to affect the then pending dispute, and that "it contained assertions opposed to what was the fact as "regarded one branch at least of the Alee Hamdanee fa- "mily" (the Bukhshee's), in proof of which he refers to partitions in that branch (Exhibits 57-58-59).

108. But partitions in the Bukhshee's branch of the family, which no doubt took place at times amongst themselves, do not shew that similar transactions occurred in the Nawab's branch; and the language of the agreement is not, as suggested, that no division has taken place in "the family of Alee Hamdanee" as the following extract will shew and refute:—"As above detailed, the eighth part that has been "written out to me by my beloved son, the Nawab, is merely "in consequence of his regard to my satisfaction and plea- "sure, because such division never hath taken place *in this* "*family* during the five generations past"—obviously referring to the Nawab's family only for it was only true of them, and there had at that time been only three generations on the Bukhshee's side, whereas there had been five Nawabs.

109. Nevertheless the Agent, arguing on the erroneous supposition that Exhibits 57, 58, 59 would refute the custom contended for at that time by the Nawab, says, "The inference then is" (it certainly is not) "that the "consent of the Bukhshee (Meer Sudroodeen) was re- "quired only to prevent his urging any claim *at that par-* "*ticular time*" and quoting it as a precedent.

110. If I have correctly shewn that the extract from the agreement, above quoted by me, applies to the *Nawab's branch of the family only*, this "inference" falls to the ground; but, in truth, the language of the whole clause is clear and unambiguous and instead of being confined to putting aside a claim of the Bukhshee "at that particular

time" (which all the circumstances shew he was not advancing) it provides generally "and henceforth, *if any of* "*the relations* claim a share in an estate of a deceased or "living person, his claim is to be null and uncognizable."

111. The Agent finds fault with the expression in the agreement that no division had taken place in the family "for five generations"—the late Nawab being only the fourth in descent from the founder of the family; but the phrase is critically, as well as substantially, correct. Nawabs Nizamoddeen and Nusseeroddeen were brothers, and there had, in fact, been five reigning Nawabs, though only four generations in a direct line of descent from one another.

112. But Mr. Frere (in para. 35) entirely guided by the supposed precedent of 1815, says that "except in its "strictly literal sense that 'no *similar* division had ever "taken place,' the assertion (in the agreement to that effect) "certainly is not true"; and further, in para. 36, referring to the same precedent, he says, it shews "that the custom "of the family did not, as is asserted, preclude the estate "being encreased by shares from collateral branches."

113. The supposed precedent being, as I have shewn above, an entire misconception of the Agent, and the Nawab and the Bukhshee not having been "collateral branches" of Sufdur Khan's family, or, in the Agent's words, "of a different tribe," it is quite obvious that the precedent can throw no light on the usages of the collateral branches of the Syud family of Alee Hamdanee; and as the language of the 13th clause of the agreement, and the usage it solemnly records, are impeached by the Agent, solely on the above precedent, it follows that they must now be considered to be unassailed.

114. I therefore confidently submit to Government

that the claims of my children to the Nawab's estate, founded on His Excellency's intentions in favor of his own issue and myself, derive great support from the usage of the family and from the Bukhshee's own statement of the nature of the release demanded from him by the Nawab before His Excellency would allow him to marry Shahzadee Begum; and that even if it were correct, which the proofs in the case clearly shew it is not, that "what his (the "Nawab's) pleasure was in this case (the inheritance to "himself) he has not recorded even in the most informal "manner" (Agent's 39th para), still if we find nothing alleged or proved to the contrary, we must suppose that the Nawab intended to follow the custom of five generations, and it is contrary to all the circumstances of the case to suppose that he ever could have contemplated at his death, that his estate should be distributed between his issue and collaterals according to the Mahomedan code of inheritance.

115. I trust I shall be pardoned if I here cite the 14th Section of Regulation II. of the Surat Regulations of 1800 introduced by Governor Duncan on appointing Courts of Justice for the city of Surat after its transfer by the late Nawab's father to the British Government. It shews the full force of "family usage" in the opinion of those who were then framing a Code that was to be acceptable to the feelings of the inhabitants of the city.

XIV. "In all suits of civil nature that respect the succession to "and inheritance of landed and other property, mortgages, loans, "bonds, securities, hire, wages, marriage and caste, and every other "claim to personal or real right and property, the cause is to be de-"cided, as far as shall depend upon the point of law, by that of the "defendant; the laws of the Koran with respect to Mussulmans and "those of the Shaster with respect to Hindoos being thus to be taken as "the general rule for the Judge's guidance; and on all such occasions the

"Moolvees or Pundits shall severally attend to expound the laws of their "religion respectively as applicable to each case: and with respect to Portuguese and Parsee inhabitants, when they are defendants, the Judge is "to be guided by a view to equity in his decisions, making all due allowance for their respective customs, as far as he can ascertain the same. "*But in all cases of succession to landed property, the Judge is, of* "*whatever religion the parties may be, to endeavour to ascertain also* "*whether they have been regulated by any general usage or by any particular usage of the family of the defendant and to consider in his* "*decision the weight due to such evidence.* Besides which, in all cases "whatsoever, the Judge is to enquire and satisfy himself whether there "be or be not an unwritten yet ascertained law (called in Hindoostanee Raeje-ol-moolk, or the customary rule of the country), and "whether this rule be or be not usually applied to the decisions of "cases such as the one depending, whether relating to the claim of an "Hindoo or Mussulman, Parsee, Portuguese or other Christians, "where, if the affirmative be found clearly to be the case and that "such customary law appear at the same time duly consistent with "the principles of equity, it is, after its particular application to the "immediate subject of litigation together with the above required "grounds of preferring it (if they be found to exist) shall have been "recorded, to operate to the exclusion, so far, of the written and "formal code of the Hindoo Law and Mussulman Law books and "treatises, as being more essentially, and nearly, the rules to which "the natives have become habituated."

And if this case be examined in the spirit of the above clause, it will be difficult to deny that a family usage of the nature therein contemplated has been proved to exist in the Nawab's family.

116. Mr Frere, in recommending Government to apply in this case the Mahomedan law of inheritance, (which he does in paras. 39 and 40) is influenced by the consideration that, as a general rule, real or immoveable property devolves on death according to "the *lex loci*" and that

personal property is distributed according to the law of the deceased's domicile.

117. This rule has been adopted universally in Europe, where a certain character is impressed upon land by the law of the place in which it is situate, and which does not vary under any circumstances.

118. But all laws are divided by jurists into personal and real, and personal laws are defined to be those which solely affect the person without any reference to property. Laws purely real, directly and indirectly regulate property without regard to the character of the owner.

119. Now there is no *lex loci* affecting land in Surat. It changes its character from day to day according to the personal law of the owner, at one time devolving according to the Mahomedan law, at another time according to the Hindoo law, and, in the hands of a Parsee, according to the usages of that people.

120. It has therefore always been acknowledged that there is no *lex loci* in India—that the Mahomedan law is purely a personal law; and Mr. Frere has misapplied the rule he quotes when he speaks (see end of para. 30) of the Mahomedan law as "the *lex loci*" (of land in Surat). I advert to this, because the Agent seems to suppose that he has found a law applicable to the case, for he says—"for "though we might, *had any laws of the Nawab's been forth-* "*coming*, have raised the question whether *the lex loci was* "*to be strictly applied to the real property*? still, no such laws "existing, there is no ground for raising any question at all."

121. But, there being in fact no *lex loci rei sitoe* as above shewn, if His Lordship in Council shall concur with the Agent in thinking that the Nawab's wishes and intentions have not been sufficiently established by me, and

that I have not shewn any usage in his family, it will then remain for Government to say how the estate shall be disposed of, unembarrassed by any legal considerations; for the Mahomedan code is no more applicable to the case in *strict law* (whatever it may be in point of discretion or justice) than the English code would be, the one being as much as the other " the *lex loci.*"

122. Mr. Frere makes a strange assertion in his 40th para., namely, that it was sought on the examination of Moonshee Lootfollah Khan to prove that the late Nawab could not be held to be a Mussulman, and he adds " it is " therefore contended that the Mahomedan law is not " applicable to the case of his Inheritance."

123. It will be seen, on turning to Moonshee Lootfollah's evidence, that the part quoted by Mr. Frere was given on the cross-examination and in answer to a question by my opponents, and I have nowhere foun ed the argument suggested on it nor any other, nor could I have done so without incurring just ridicule.

124. It is unnecessary for me to do more than glance at the remaini part of the Agent's report, in which he examines the several claims of the parties before him to share as Mahomedan heirs.

125. But as he was prepared to come to the conclusion contained in his 47th and 48th paras, it certainly seems surprising that he should have thought himself called upon to enter into the examination of the matters discussed in his 44th, 45th and 46th paras—an enquiry I deprecated in the beginning as unnecessary.

126. As however the Agent has commented in his report on a part of the evidence bearing on this point, I may be permitted to say that I am at a loss to know why he considers (para. 48) that the evidence does not prove Ameerool-Nissa Begum to have been the Nawab's wife

according to the rules of the Mahomedan law, or why Mr. Frere should say that I appear to admit as much when I produced the Cazee's record and Moolvie Khoob and others who were present at the marriage to prove the fact; and, if it were at all necessary to do so now, it would not be difficult, even amidst the mass of perjured, worthless depositions brought forward by my opponents merely to injure the character of my mother-in-law, to select convincing proofs of her having been, as she is declared in the record of the marriage to be, an emancipated slave, and which entry bears, amongst others, the attestation of Meer Kumroodeen.

127. And furthermore all my opponents admit that my mother-in-law was married to the Nawab, though they affect to doubt her being the lady referred to as Wuzeer-ool-Nissa Begum in the Cazee's record of the marriages of the 10th September 1825. But the Agent's doubt as to the strict legality of the marriage, and for which he assigns no reason, is quite inexplicable to me.

128. I would add that one of the late Nawab's most intimate friends and a man of great respectability, Ghoolam Ahmed, commonly called Moolvie Khoob Mia—Hafiz Ahmed, who was always with the Nawab—Shurfu-Nissa Begum, the adopted daughter of Nawab Nizamoodeen—Ariash Begum, the widow of Meer Kyroodeen the late Nawab's brother—Atmaram and Meetaram, who were both the Dewans of His Excellency—and Mahomed Ali Beg, his minister—in fact all the respectable witnesses, speak to my mother-in-law having been a slave of the late Nawab and emancipated before marriage. The witnesses to prove the contrary do not rank a single person of credit or respectability amongst them, whilst Booa Rung Bahr (and whose evidence is cited by the Agent in para. 46) has quarrelled with my mother-in-law and is living now with her bitterest opponent Padshah Begum, and, of course,

could not be expected to speak a word in my mother-in-law's favor. As to the Seedees, I beg to refer Government to the opinions recorded of them by Mr. Elliot and Sir R. K. Arbuthnot, and which I have extracted in the two concluding paras. of my reply on the 4th May 1852.

•129. I do not desire to quarrel with the conclusion the Agent has arrived at with respect to Padshah Begum, namely, that she was not divorced by the Nawab; but Mr. Frere makes a strange oversight in the commencement of his 57th para. The Mahomedan law gives her dower to a divorced wife equally in Persia and Arabia as in India, and as Padshah Begum's dower was only Rupees seven hundred and fifty, it is obvious that the liability to pay her that sum of money would never have operated with the Nawab as a reason for not divorcing her if he were so inclined.

130. But regarding Padshah Begum as one of the widows of the deceased (and I have never cared to question her right to be so considered), I submit to Government that she has no equitable right to share in the private estate of the Nawab, even if the Mahomedan code be taken generally as a guide in disposing of the property. It is not the law of the deceased as the Agent admits. Government therefore in adopting it, in their discretion, are not called upon to carry it out, in all its details, or to apply it in favor of every claimant.

131. Padshah Begum is already in the enjoyment of a larger share of the pension than the Mahomedan Law would have given her, as one of the widows of the deceased. She received but a bare maintenance during the Nawab's life-time, and whatever may be argued as to His Excellency's intentions, no one can doubt for a moment that if he had made a Will, he would only have left her a maintenance corresponding with that given to her by him-

self in his life-time and infinitely below that which she now enjoys.

132. With respect to Meer Mooeenoodeen Bukhshee and Meer Kumroodeen, the Agent (para. 61) quite misrepresents the argument I addressed to him against admitting their claims.

133. They contended that the estate *must* be divided according to the Mahomedan Law, no matter what the intentions of the Nawab were; and I then thought it right to displace their 'locus standi' *under that Law.* I have all along contended that the Mahomedan law did not necessarily furnish the rule of division (and the Agent concurs in that view) and hence that it was an unnecessary enquiry whether my wife's legitimacy would or would not bear the test of that law, as the Nawab had always considered her as his lawful heir; and there is no inconsistency in these two positions that I am aware of. But it is clear that neither Meer Mooeenodeen Bukhshee nor Meer Kumroodeen can prove themselves to be legitimate by the Mahomedan law, as I have pointed out (in paras. 96 to 104 inclusive of my former observations,) and which reasoning the Agent does not attempt to refute. Further, if the evidence produce dby Meer Mooeenodeen as to his mother, is to be tested by one tithe of the strictness applied by the Agent to the evidence produced by me, what proof is there of the identity of "Goolrung" (Meer Mooeenodeen's mother) with the girl "Moheenee" mentioned in the deed of purchase of the 20th May 1803 filed by him to shew that his mother was a purchased slave? None whatever; and indeed the Agent (para. 61) points out a strong fact which presumptively negatives this identity. Meer Mooeenodeen might therefore as well have filed any other deed of purchase that he could lay his hands on in turning over his father's Dufturs; but further, Meah Bussunt the purchaser is de-

scribed in the deed as "the dependant" not "the slave" (as assumed by the Agent) of Meer Sudroodeen, and no proof whatever is adduced by Meer Mooeenodeen that Bussunt when so styled "a dependant" was actually "a slave." The reasoning, therefore, of Meer Mooeenodeen, in his reply founded on this assertion, (namely, that the property of the slave is the property of the master and that Moheenee *therefore* was the lawful property of Meer Sudroodeen as Bussunt's master) and cited by the Agent in para. 61, falls to the ground.

134. The Agent has committed a strange oversight when noticing the evidence produced by Meer Kumroodeen in support of his legitimacy (see para. 65). The Meer produces two old ladies, who say they had *heard* from Medina Begum, the elder Kumroodeen's wife, and from Shumsoodeen's mother, that Kumroodeen, having no children by Medina Begum, was contemplating another marriage, when his wife, to avoid that, gave him Fuzloo alias Niaz Banoo, a slave she had from her father as part of her dowry. The Agent believes all this without a word of scrutiny, and yet the fourth claimant before him, Meer Badurshah, is the grandson of *this very Medina Begum*, as may be seen on reference to the Pedigree and the Agent's 3rd para.

135. I draw attention to these obvious remarks on the evidence adduced by Meer Mooeenodeen and Meer Kumroodeen to support their legitimacy, in order to contrast the easy manner in which the Agent passes over their proofs, in comparison with the harsh criticism to which he has subjected every proof adduced by me and affecting my mother-in-law or my late wife.

136. To strengthen his recommendation of the Mahomedan Law in the case, Mr. Frere calls it "the religious law" of the deceased (para. 39). But there is no legal or moral force in these words; for the Mahomedan code of

inheritance has never been considered so binding on even orthodox Mahomedans as to have the force of a religious obligation. Thus there are living under the British rule, in different parts of India, various tribes of Mahomedans who never have adopted the rules of succession laid down in the Koran; to mention only the Kojahs, the Borahs, the Memons, the Moplas on the Malabar Coast &c. and throughout India, indeed in Persia, Arabia, Affghanistan, &c., to this day every Mahomedan family of wealth, although sometimes giving small shares, in the main disregards the Koran in the transmission of its property, the bulk of which invariably is enjoyed by the eldest son : and in the very case now before Government, the late Nawab inherited not under but in opposition to the Mahomedan law; but further, if he had been a Sheea instead of a Soonee, the whole of his wealth, after deducting the widows' shares, would have gone to his only surviving daughter, my late wife, and the claims of Meer Mooeenodeen Bukhshee and of Meer Kumroodeen would not have arisen.

137. I have already shewn that, if Government adopt the Mahomedan code as the rule of division in this case, they will do so not as being the *lex loci*, as supposed by the Agent, but purely as a matter of choice and discretion. Now the Mahomedan code might have furnished an equitable rule of division if the Nawab had left several descendants and they were disputing amongst themselves. But why apply it in favor of distant kindred like Meer Mooeenooddeen and Meer Kumroodeen, who have no single equitable circumstance to advance in their favor, to the spoliation of the Nawab's own issue and his positive contract, and, I submit, manifest intentions in her favor.

138. I contended before the Agent, and, I submit, with success, that in this enquiry I was entitled to be regarded

as a defendant; for whatever views Government might form as to the successorship to the dignity, they were not called upon to seize from my wife and myself all His Excellency's private estate.

139. The Nawabship having been declared to be at an end, it is an indisputable legal proposition that the privileges of the family, in exemption from the Adawlut and subjection to the Nawab, expired at the same time, and that my wife and myself immediately became subject to the Zillah Court of Surat and could only be legally deprived of the Nawab's estate by the course laid down in the Regulations.

140. The Agent, in para. 10, in noticing the argument, says, that it was an open question until the 10th October 1846, whether the Judge could have entertained suits had they been brought against my wife and myself.

141. It was not an open question with the Judicial authorities, and it rests with them to declare what parties are subject to their jurisdiction. But, even if it had been, it would not affect the point contended for, that our lawful possession was disturbed by an illegal act of the Agent—an act as illegal as the sequestration by that officer of the effects of any private person in Surat would have been; and I am, consequently, in common justice, entitled to have the case considered as if no such sequestration had taken place and as if I were still in possession with the known consent of the deceased, defending myself against those who claim as of right a share in his property.

142. His Excellency died in 1842, and we are now, at the end of ten years, enquiring what his intentions were? and I am regarded as a person having a strict affirmative case to prove, instead of being considered, as I ought to have been throughout this enquiry, as the person from whose lawful possession the property had been taken and who was entitled therefore to have it restored to him, unless

others could establish a better right to it; and I now earnestly trust, in the ample discretion with which Government are invested in disposing of this case, that they will feel that I am entitled to have my marriage contract respected and performed as far as it now can be, and that my children, the Nawab's only issue, have claims to the property irrespective of any human code, in competition with which those of distant kindred cannot for one moment be placed, and that to restore to my hands the property forcibly taken by the Agent in 1843, would be to do that which on every ground must appear most consonant with justice, good faith, and the wishes and inclinations of the deceased.

143. In conclusion, I trust I may be allowed respectfully to call the attention of His Lordship in Council to the duties imposed upon them by Act XVIII. of 1848. The administration of the estate of the late Nawab is vested in the Governor in Council exclusively, and not in any Agent or subordinate officer; and Mr. Frere's report, though called a decision by him, can only be accepted as the statement of his own views and the arguments by which he supports them.

144. The Government having, by a Legislative Act, taken on themselves the administration and distribution of the late Nawab's property in succession to the Nawab, are of course morally bound, as far as they can, to place themselves in the position of the real owner, whose proprietory powers they are exercising. They are not at liberty to frame, on artificial reasoning, a scheme of distribution, which, it is manifest, the late owner would not, if alive, himself have sanctioned. They are entitled of course to assume that he would have acknowledged all just and equitable claims upon his estate; but beyond that they are the mere declarers of the will of the late Nawab. It is undisputed that his will, if clearly expressed, should be the rule; and

the enquiries for His Lordship in Council are, I respectfully submit, First—is there or is there not a claim, by reason of the marriage contract on the occasion of the marriage of the Nawab's daughters with my brother and myself, to the entire succession on behalf of myself and my wife's descendants, binding on equity and good conscience? If that be so, unless the Nawab repudiated that obligation, in the most clear and unequivocal manner, no further question seems open, and my claim to succeed is at once established. Secondly—supposing the marriage contract not proved, the next enquiry is, what were the Nawab's intentions respecting his succession? If, from circumstances, Government can come to the conclusion that his own intentions were to benefit some particular objects of his affection in exclusion of others—that, I submit, should furnish the definitive rule for the appropriation of his estate. Thirdly—supposing that the Nawab's real intentions cannot be distinctly ascertained, then the Government must, as far as possible, place themselves in his position, identify themselves with his feelings towards the different parties who claim to be entitled to partake in his bounty, and apportion the estate as nearly as possible as the Nawab would do if he were alive.

145. To adopt the Mahomedan rule of succession, merely as such and irrespective of the Nawab's intentions, is as unjustifiable and illogical as to adopt any other legalised system of distribution.

146. Whichever of the three rules above suggested be adopted, my claim can alone be supported. If the marriage contract be proved, it is clear it *would* give me a title superior to a mere exercise of will, and one resulting from a legal obligation. If the evidence of the Nawab's inten-

tions be examined, there can be no reasonable doubt that his daughters and sons-in-law and their issue were the sole objects of his bounty. But if that evidence be defective, and the Government, assuming the position of the Nawab, ask their consciences the question whether, if the Nawab could now be appealed to, to name the object on whom he would have wished his wealth to devolve, the answer would not be in favor of his own offspring and not a distant member of the family to whom he owned nothing of affection or of gratitude and from whom when alive he was estranged,—the Government are surely bound to appropriate the late Nawab's property in that manner which would have been most acceptable to his own feelings and would merit his approval and sanction if he were alive.

I have the honor to be, &c.

(Signed) JAFUR ALEE.

BOMBAY, *22nd March*, 1853.

No. 3103 of 1853.

From A. MALET, Esq.,
Chief Secretary to Government, Bombay,
To MEER JAFFER ALI KHAN, Bahadoor, Surat.
Dated, 21st July, 1853.
Political Department.

SIR,

In answer to your two letters, dated the 22d March, 1853, I am directed by the Right Hon'ble the Governor in Council to refer you to the Acting Agent for the Right Hon'ble the Governor at Surat, who will communicate to you the decision of Government in the matter therein represented.

I have the honor to be,
Sir,
Your most obedient servant,
(Signed) A. MALET,
Chief Secretary.

Bombay Castle,
21st July, 1853.

No. 193 of 1853.

From H. HEBBERT, Esq.,
Acting Agent for the Rt. Hon. the Governor at Surat.
To MEER JAFFER ALI KHAN, Bahadoor.
Dated, 27th July, 1853.
Political Department.

SIR,

I am directed by the Right Hon'ble the Governor in Council to inform you, that on full consideration of the appeals preferred by yourself on behalf of your two daughters

and your mother-in-law, Ameer-ool-nissa Begum, and the other claimants on the property of His Excellency the late Nawab of Surat, against the decision passed by Mr. Frere the late Agent; Government has under Section II. of Act XVIII. of 1848, adjudged the succession to the said property in the following shares :—

The Nawab's 2 Grand-daughters,

Ruheem-ool-nissa Begum	4/16
Zea-ool-nissa Begum	4/16

The Nawab's 2 Widows,

Padsha Begum	1/16
Ameer-ool-nissa Begum	1/16

The Great-grandsons of the late Nawab's Great-grandfather's brother in the male line,

Meer Moyenoodeen Bukshee	3/16
Meer Kumroodeen Wullud	3/16

2d. With reference to the above, I request you will be good enough to attend either in person or by Vakeel at my office, on Monday next the 1st proximo, at 12 o'clock A. M. precisely, as I should wish to consult you regarding the best mode of distributing the property in question amongst those to whom it has been awarded.

I have the honor to be,
Sir,
Your most obedient servant,
(Signed) H. HEBBERT,
Acting Agent.

SURAT:
Office of Agent for the Rt. Hon. the Govr.,
27th July, 1853.

To

THE HON'BLE THE COURT OF DIRECTORS,

&c. &c. &c.

THE MEMORIAL of Meer Jaffer Alee Khan, Bahadoor, of Surat, on behalf of his daughters Zeea-ool-nissa Begum and Ruheemoon-nissa Begum,

Humbly Sheweth,

That his Excellency Meer Afzuloodeen Khan, the late Nawab of Surat, departed this life in the month of August 1842, leaving a daughter named Bukhtyar-ool-nissa Begum, since deceased, then the wife of your Memorialist, his only child him surviving.

That his Excellency died possessed of a very large estate, both moveable and immoveable, in Surat, of the value of several lacs of Rupees, and which, in accordance with the marriage contract made at the time of your Memorialist's union with his Excellency's daughter, and with his Excellency's often declared wishes and intentions, passed on his death into the hands of your Memorialist and his late wife as his Excellency's heirs.

That in the month of February, 1843, the whole of the above estate was illegally sequestered and taken out of their

hands by the Agent to the Honorable the Governor at Surat, and the same has remained in the charge of the Surat authorities up to the present time. And by an Act of the Legislative Council of India, No. 18 of 1848, the Government of Bombay was empowered to administer the Estate of the late Nawab.

That your Memorialist's late wife died in the month of January, 1845, without male issue and leaving your Memorialist's two daughters abovenamed her only surviving issue.

That an enquiry has recently been made by W. E. Frere, Esq., the Agent for the Governor at Surat, into the claims of your Memorialist's children (your Memorialist having waived his own rights in their favor) and of other persons to the estate so sequestered and taken out of the hands of your Memorialist and his late wife ; and Mr. Frere having submitted a report on the several claims to the Bombay Government, your Memorialist and others preferred appeals therefrom, and on the 27th of July 1853, H. Hebbert, Esq., then the Acting Agent for the Hon'ble the Governor at Surat, addressed a letter of that date to your Memorialist, conveying the decision of the Bombay Government in the following words :—

"I am directed by the Right Hon'ble the Governor in Council to inform you, that on full consideration of the appeals preferred by yourself on behalf of your two daughters and your mother-in-law, Ameer-ool-nissa Begum, and the other claimants on the property of His Excellency the late Nawab of Surat, against the decision passed by Mr. Frere the late Agent ; Government has under Section II. of Act XVIII. of 1848, adjudged the succession to the said property in the following shares :—

The Nawab's 2 Grand-daughters,

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The Nawab's 2 Widows,

Padsha Begum:......... .... 1/16
Ameer-ool-nissa Begum.... .... 1/16

The Great-grandsons of the late Nawab's Great-grand-father's brother in the male line,

Meer Moyenoodeen Bukshee............... 3/16
Meer Kumroodeen Wullud................. 3/16

2d. With reference to the above, I request you will be good enough to attend either in person or by Vakeel at my office, on Monday next the 1st proximo, at 12 o'clock A. M. precisely, as I should wish to consult you regarding the best mode of distributing the property in question amongst those to whom it has been awarded."

That your Memorialist feels deeply aggrieved and injured by the above decision, and respectfully appeals therefrom to the justice of your Honorable Court.

That your Memorialist is wholly unaware of, and is therefore unable to submit any remarks upon, the grounds of the above decision, except in so far as the same may be an adoption of the reasoning disclosed in the report of the said Mr. Frere, of which your Memorialist was furnished with a copy, and which he respectfully submits was wholly erroneous, as pointed out in your Memorialist's appeal.

That your Memorialist having fully detailed the case of his children in the written observations submitted by him to the Agent, Mr. Frere, in the course of enquiry, and which are recorded in that gentleman's proceedings and

in the Appeal presented by your Memorialist to the Government of Bombay against the report of Mr. Frere; forbears to trouble your Honorable Court in this Memorial with any further remarks thereupon, or upon the evidence he adduced in support of the same.

But your Memorialist humbly prays your Honorable Court to send for the proceedings of the enquiry and of the Honorable the Governor of Bombay in Council founded thereon, and that your Honorable Court will be pleased, after due consideration thereof, to annul the decision of the Government of Bombay, and to direct the restoration, to your Memorialist, of the Estate of the late Nawab, of which he has been illegally and unjustly deprived.

And your Memorialist shall ever pray.

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